ROOTING OUT DISCRIMINATION IN MORTGAGE LENDING: USING HMDA AS A TOOL FOR FAIR LENDING ENFORCEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 25, 2007

Printed for the use of the Committee on Financial Services

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ROOTING OUT DISCRIMINATION IN MORTGAGE LENDING: USING HMDA AS A TOOL FOR FAIR LENDING ENFORCEMENT

Wednesday, July 25, 1007

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:03 p.m., in room 2128, Rayburn House Office Building, Hon. Melvin L. Watt [chairman of the subcommittee] presiding.

Members present: Representatives Watt, Lynch, McCarthy; Miller and McHenry.

Also present: Representatives Frank, Green, Jackson Lee, and Baca.

Chairman WATT. This hearing of the Subcommittee on Oversight and Investigations will come to order.

Without objection, all members' opening statements will be made a part of the record in their entirety, and I don't seem to see that as a major problem at this point, so I'll recognize myself for an opening statement.

Today's hearing is entitled, "Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement."

Home ownership is the key to the American dream and a primary driver of our economic engine. Recent years have seen an explosion in home ownership caused in part by the proliferation of mortgage products that have allowed more people to buy more homes.

It is good that home ownership rates are at historically high levels. However, this expansion of home ownership has come at a cost. Too many lenders saddle borrowers with high-priced, unaffordable, and unfair home loans. I read somewhere that one financial institution offered as many as 105 different mortgage products.

When I bought my first home, the standard mortgage was a 30-year fixed rate mortgage. Some of these exotic mortgages, 80–10–10 loans, hybrid ARMs, and ARMs with exploding balloon payments are not only confusing, but they can be grossly unfair.

We now have a foreclosure crisis looming due to dangerous high-cost lending by lenders. Subprime and predatory lending have taken a toll on the market, leading some to question whether, ultimately, such loans provide a net gain in home ownership. We're here today, however, to examine an even more troubling and persistent problem: Discrimination in mortgage lending.

The Home Mortgage Disclosure Act, HMDA, requires lenders with offices in metropolitan areas to disclose to the public information about the mortgage loan's geographic location, price, as well as the race, gender, and marital status of the borrower, among other factors.

Ever since loan pricing data started to be collected in 2004, HMDA data has revealed a very troubling trend. Minorities, especially blacks and Hispanics, receive a disproportionate amount of high-priced loans.

While HMDA data alone does not prove discrimination, recent studies seem to confirm that even when you control for income and creditworthiness, minorities still pay significantly higher prices for mortgage loans. The author of one of these studies, Mr. John Taylor, from the National Community Reinvestment Coalition, will present their findings today.

The pertinent question for this hearing concerns whether the Federal Government has been asleep at the wheel regarding Fair Lending Enforcement, even more consistently and persistently than it has about lender standards and other abuse.

In a June 13, 2007, article in "Bloomberg News," HUD Secretary Alfonso Jackson charged that blacks and Hispanics are being targeted—those are his words—for high cost, unfair loans.

I'd like to submit for the record the article appearing in the June 13, 2007 issue of "Bloomberg News," entitled, "Regulators Quiet as Lenders Targeted Minorities." And without objection, we will submit that for the record.

The article reveals that the U.S. agencies that supervise more than 8,000 banks have not censured a single bank for violating Fair Lending laws, some 3 years after Federal Reserve researchers gathered data demonstrating that blacks and Hispanics are more likely than whites to be saddled with high-priced loans.

We are fortunate to have all of the Federal regulatory agencies with us today, as well as HUD and the Department of Justice, to explain what they are and are not doing to enforce the Nation's Fair Lending laws.

In fact, I structured this hearing in reverse order of what is customary, putting our consumer witnesses on the first panel so that our representatives from government agencies can hear firsthand what consumers and their representatives have to say. Perhaps they'll take heed and consider taking some action to stop it. The cost of a quarter point in interest over the life of a mortgage is substantial, and we simply can't tolerate that extra quarter point being based on race.

With that, I will recognize the gentleman from California, Mr. Frank—Gary Miller, I'm sorry, for his opening statement.

Mr. MILLER. Somebody told me Mr. Frank came in, and Barney and I sound a lot alike.

Chairman WATT. Yes.

Mr. MILLER. I know that we part our hair on the same side, so I can understand why you'd be confused.

Chairman WATT. And there used to be a member actually named Gary Frank.

Mr. MILLER. But he looked more like the chairman than he did like—well, Barney, it's good to have you with us today, regardless.

Chairman WATT. In any event, I'm recognizing my ranking member here, Mr. Miller, I think his name is.

Mr. MILLER. Two minutes of my time is gone already, I know.

Chairman WATT. For 5 whole minutes or such time—such reasonable time, as you may consume.

Mr. MILLER. Well, I'll be reasonable.

Thanks for holding this hearing today to examine how the Home Mortgage Disclosure Act, that's called HMDA, has been used to help enforce our Nation's Fair Lending laws.

I am pleased that we have with us today a panel of banking regulators, enforcement agencies, industry representatives, and others to shed light on efforts to eliminate discrimination in the mortgage industry.

Housing finance is vital to helping families achieve the American dream of home ownership to help the overall health of the economy.

To foster home ownership in this country we must eliminate abusive lending practices while preserving and promoting access to affordable mortgage credit. There's no question that some non-prime borrowers are subject to abusive practices. This should absolutely be prevented. However, there is no question that vast numbers of borrowers who are not victims of such practices can be harmed by overzealous efforts to restrict non-prime credibility.

HMDA data has been an important tool in striking this balance between protecting consumers while not inhibiting the availability of credit that gives many families the ability to become homeowners. HMDA data helps to determine whether disparities exist so that our enforcement agencies can investigate such disparities to determine whether they are caused by illegal discrimination practices.

I believe the question before us today is how the data has been utilized to enforce our Fair Lending laws and if more can be done to root out discrimination.

Clearly the price of a mortgage should be based on the economic risk of making a loan, not on racial, ethnic, or gender considerations.

As we hear from the panel today, I want to remind my colleagues that subprime lending is a legitimate segment of the financial service industry that gives consumers who are unable to obtain traditional financing the opportunity to achieve the dream of home ownership.

Subprime mortgages have provided millions of Americans with a way to achieve home ownership. The subprime market offers customized mortgage products to meet customers' varying credit needs and situations. And, as one would reasonably expect, subprime borrowers will pay a somewhat higher rate to offset their greater risk.

Literally millions of Americans are unable to qualify for the lowest rate mortgages available in the so-called "prime," also called "conventional" or "conforming" market, because they have less than perfect credit, or—if they cannot meet some of the other tougher underwriting requirements of the subprime market. This is not to say that anybody should be discriminated against, though.

As we battle unscrupulous actors and we work to protect home buyers, we also have the duty and obligation of ensuring that we do not act in a way that constricts the flow of capital to credit-starved communities.

I look forward to hearing from the witnesses today so that this subcommittee can assure that the detection and enforcement tools that are in place to protect home buyers in this country are working appropriately.

Thank you. I yield back.

Chairman WATT. I thank the gentleman for his opening statement.

I will yield 5 minutes, or as much time as he may consume, to the chairman of the full committee, Chairman Frank. I have to remember his name.

Mr. FRANK. I thank the chairman of the subcommittee.

And sometimes things that aren't planned work out better than others. It was—it's the seniority system that decides who gets to chair what around here. And, in this particular case, the fact that the gentleman from North Carolina is the chairman of the Oversight and Investigations Subcommittee of this full committee at this time is a very fortuitous circumstance.

The HMDA data that just came out was one of the most depressing things that I've seen in my capacity as a Member of Congress in the domestic area. Obviously, massive loss of life is the worst thing that we can see. We tend to see that, with the exception of hurricanes, outside the country.

But looking at the public policies in the country, the fact that in 2007, so many years after we supposedly officially banned segregation as part of the constitutionally-accepted practice, we have such evidence of racial discrimination in an important aspect of our human life, ought to make everybody sad.

And our first response should not be accusatory, but rather how do we fix it? And I don't believe that it's all, or even primarily, explicit racism on the part of lending institutions. But no one who has lived in America and is familiar with this country's history will expect anyone to believe that racism is not part of it, and the statistics don't fully explain everything, but there are clearly terribly disturbing inferences that are inescapable.

And then I recently, of course, saw the study in my own hometown, the metropolitan area of Boston, in which African-Americans in the upper income bracket are more likely to be pushed into subprime lending/borrowing than white people in much worse economic categories. There simply are not statistical explanations for that.

So we have this combination of the subprime problem and of the racially discriminatory aspect of it. And it isn't clear at this point what we can do.

I will say this: If working together, as it is important that we do, we can come up with ways to improve the situation, to diminish this terrible, terrible statistic of racial discrimination, then this committee will do everything it can. And that's why I say Mr. Watt from North Carolina, unlike many Members of this House, actually practiced law for 20 years. He is a skillful lawyer, who has now returned to put his skills to work in the public policy area.

When you have, as chairman of this Oversight and Investigations Subcommittee, the immediate past chair of the Congressional Black Caucus, with his skills and experience as a lawyer, and the full backing of this committee, I hope everybody will take very seriously not just this hearing, but our commitment to changing public policy to the extent that we can.

There is no excuse, and no one should be at all willing to settle for a situation in which the race of a borrower today makes so much of a negative difference for some people.

So I thank the gentleman for holding this hearing and for all his work on the issue. And we have a first-rate staff, and I am glad to see my friend from California here, who has been a very strong supporter of our efforts to deal with the housing crisis. I really do believe, on a bipartisan basis, that we will be going forward on this.

And shame on all of us, shame on this country, if the next HMDA survey shows data that is as bad as it shows today.

Thank you, Mr. Chairman.

Chairman WATT. I thank the chairman for his comments, both about the substance of the issue and about the chair of this subcommittee.

Does the gentlelady from New York desire to make an opening statement?

Ms. MCCARTHY. I thank the gentleman, but I have a policy of not doing opening statements.

Chairman WATT. I recall that. She's not a big fan of opening statements.

Mr. FRANK. And she ends up giving dirty looks to people who give them.

[Laughter]

Chairman WATT. Yes. I do recall that she was not—I hope she won't be offended when I recognize the gentleman from Massachusetts for an opening statement, if he desires to make one.

Mr. LYNCH. Thank you, Mr. Chairman.

I don't have any such prohibition.

Today's hearing on discrimination and mortgage lending is an important step, I think, for the Oversight and Investigations Subcommittee, and I am delighted that the chairman has taken this on as an initiative. It was a long time coming.

The pattern of discrimination revealed by the 2004 and 2005 HMDA data requires our utmost attention. The 2005 HMDA data, like the 2004 data, revealed that black and Hispanic borrowers are more likely to obtain loans with prices above pricing thresholds than are non-Hispanic whites.

Today I believe we will learn more, not only about the HMDA report and requirements, and the implications of these results, but also the efficacy of the Fair Lending enforcement that we conduct around the country.

I am particularly pleased that a constituent of mine is here to testify this afternoon on the first panel. Ginny Hamilton is the executive director of the Fair Housing Center of Boston, a group that fights illegal housing discrimination in Essex, Middlesex, Norfolk, Plymouth, and Suffolk Counties of Massachusetts, including much of my district.

And, as part of their mission, the Fair Housing Center researches and documents the nature and extent of housing discrimination, as well as the Fair Housing impacts of public policies.

Ms. Hamilton will testify today regarding a report released by the group entitled, "The Gap Persists," and I have a copy of it here, a report on racial and ethnic discrimination in the Greater Boston Home Mortgage Lending market.

I am disheartened to know that this report also found differences in the treatment of disadvantaged minority home buyers in 9 out of 20 matched paired test cases, which is about 45 percent of the time.

The interesting conclusion that they found was that, while there were seven cases that were pursuable or actionable, in legal terms, none of the tests revealed overt discrimination that would necessarily be captured by current Fair Lending Enforcement Programs that focus on overt discrimination, leading us to question whether HMDA data should be expanded to include borrower's credit history, debt-to-income ratio, and loan to property value ratios.

It is important that we address these issues. As someone who grew up in the housing projects of South Boston, where a lot of families struggled to move from that environment into their own homes, I know the challenges that are there, not only for racial minorities, but also for single women, in most cases, single parents, trying to move their families out of public housing, or, in some cases, living with other members of other families. It's a struggle.

I am delighted that Chairman Watt is holding this important hearing, and I yield back the balance of my time.

Chairman WATT. I thank the gentleman for his opening statement. And, without objection, all other members opening statements will be made a part of the record.

I would invite the members of the first panel to come to the table for brief introductions.

As they come, I will just restate something that I said in my opening statement, that we structured this hearing in the reverse order of what has become customary in our committee process by putting our consumer witnesses on the first panel. That's not done to put the regulators in any kind of negative position, but I thought it would be helpful to help build the context around this issue.

It may be helpful to hear some of the concerns that are being expressed by the consumer witnesses, and to allow the regulators to hear some of those concerns, before we hear what the regulators are doing to try to address them.

So I welcome the witnesses. I am going to do a very, very brief introduction of the witnesses because we have a lot of witnesses, both on the first and second panel, and we want to move expeditiously to their testimony.

Our first witness is Mr. John Taylor, president and CEO of the National Community Reinvestment Coalition.

Our second witness, who has been introduced by the gentleman from Massachusetts, is Ms. Ginny Hamilton, the executive director of the Fair Housing Center of Greater Boston.

Our third witness is Mr. Hilary O. Shelton, director of the Washington bureau of the National Association for the Advancement of Colored People, the NAACP.

Our fourth witness is Mr. Saul Solorzano—did I get close—the executive director of the Central American Resource Center.

Our fifth witness is Mr. Michael LaCour-Little, professor of finance at the California State University at Fullerton.

And our final witness on this panel is Mr. Bill Himpler, the executive vice president of the American Financial Services Association.

And the rules—many of you have testified before, and you are aware that your full statements will be made a part of the record, so we ask that you summarize your testimony in 5 minutes or less.

There's a lighting system right in front of you. At 4 minutes, the yellow light will come on. At 5 minutes, the red light will come on, and it would be helpful if you would, as quickly as possible, wrap up when the red light comes on. Every once in a while people will wrap up before the red light comes on.

So I will now recognize Mr. Taylor for a summary for 5 minutes.

STATEMENT OF JOHN TAYLOR, PRESIDENT AND CEO, NATIONAL COMMUNITY REINVESTMENT COALITION (NCRC)

Mr. TAYLOR. Thank you, Chairman Watt, and Ranking Member Miller. I'm also a constituent of Mr. Lynch, but apparently my vote is not important to him anymore, so—

Mr. LYNCH. Not at all. I did not see you in the crowd, Mr. Taylor, and I want to welcome you to this committee. You have been doing lots of work on fair lending and housing issues in my district.

Mr. Chairman, I apologize. I did not see Mr. Taylor in the crowd.

Chairman WATT. Thank you.

Mr. TAYLOR. Thank you for allowing me to fish for that compliment.

Mr. LYNCH. Not at all.

Chairman WATT. I could recognize some other reasons that he might have ignored you, but—

Mr. TAYLOR. Yes. I understand.

Chairman WATT. —we won't go there.

Mr. TAYLOR. First, it's an honor to represent NCRC and our 600 members who have been working on this issue for many, many years. Regulatory oversight must promote competitive markets for all consumers, regardless of color, income, age, or gender.

Unfortunately, we have a dual marketplace in which white and affluent communities enjoy a wide range of product choices while minority and working class communities are stuck with high-cost home mortgage lenders and payday outlets.

By shining a public spotlight on the institution's lending activities, HMDA data has reduced the amount of discrimination and abuse. Yet as powerful as HMDA data has been, and efforts to stop discrimination, the full potential of HMDA has not been realized because key elements remain missing from the data.

NCRC released a report this month entitled, "Income is no Shield Against Racial Differences in Lending," and I would like to submit that for the record, Mr. Chairman.

Chairman WATT. Without objection.

Mr. TAYLOR. Using HMDA data from 2005, NCRC concluded that if a consumer is a minority, the consumer is more at risk of receiving a poorly-underwritten, high-cost loan.

Middle income or upper income levels do not shield minorities from receiving dangerous, high-cost loans. Middle- and upper-income African-Americans are twice or more as likely, nationwide, than middle- and upper-income whites to receive high-cost loans in the 167 metro areas that we examined.

In contrast, low- and moderate-income African-Americans are twice as likely to receive high-cost loans in 70 metro areas.

So income is no barrier. As you become more successful, as African-Americans with more income, it actually gets worse, according to the data.

Mr. Chairman, as you know, North Carolina's metropolitan areas had three of the worst five areas in terms of African-American white disparities. Moreover, in Charlotte, which is in your district, middle- and upper-income African-Americans were almost 3 times more likely than middle-income whites to receive high-cost loans.

Three of the worst metropolitan areas for Hispanics are in my home State, and the chairman's home State, and my Congressman's home State, for Hispanics in terms of disparity between whites. I know Ginny will have a lot more to say about that.

NCRC believes that additional data on the writing variables needs to be added to the HMDA data. But until this data becomes regularly available, the evidence suggests that the burden lies upon skeptics to disprove the existence of discrimination.

Now, regarding fair lending consumer protection and regulatory enforcement, current Federal fair lending enforcement is inadequate to protect the interest of working class and minority consumers.

In 2005 and 2006, the Federal Reserve Board used the HMDA data and referred about 470 lenders to their primary regulatory agencies for possible civil rights violations. Yet there have been only two discrimination cases, that I'm aware of, brought by Attorney General Gonzalez's Department of Justice to date, and none since the new pricing data has been available.

Bank regulators are required by law to make referrals to the Department of Justice when they uncover a patent practice of the lender that suggests lending discrimination.

In this outrageous period of high-cost loans, record foreclosures, and a plethora of disparate application of subprime versus prime loans to people of color, even for controlling for creditworthiness, two of the four bank regulatory agencies—only two of the four—made referrals to the Justice Department last year, as they're required to by law. That was the FDIC, which, to their credit, made almost 115 referrals, and then the Federal Reserve, which made several referrals.

But the OCC and the OTS made zero referrals to the Justice Department on patterns of practice of lending discrimination in 2006.

What the Justice Department did with these cases is not clear, but many of them, if not all of them, were referred back to the agencies. So the days of Janet Reno and others who took these cases seriously, and prosecuted people who were practicing discrimination because the regulators uncovered it, seem to be far away.

Another overlooked component of Fair Lending Enforcement is CRA exams. In most cases, the Fair Lending section of the CRA exam reports, in one to three sentences, that the regulatory agency tested for evidence of discrimination lending that no such lending discrimination was found.

The general public would have much more assurance that Fair Lending reviews were rigorous if the agencies described what type of Fair Lending reviews they conducted.

The bank merger application process has become lax in the last few years, and this really matters. The last major applications where there were merger hearings were the Fleet Bank and Bank of America, and the Chase and Bank One mergers. That was back in 2004.

Since then, there have been several large mergers from your home State as well, Mr. Chairman, with Wachovia, World Savings, and other financial institutions, where the public has not had an opportunity or the benefit of having a public hearing.

These hearings are incredibly important for people in these communities to be able to express to the regulators what the impacts of the mergers have been, what the history of these banks have done in their community. In fact, through these merger hearings and through the commitments of these financial institutions, low- and moderate-income communities have gotten over $4 trillion in written CRA agreements. So this whole process is undermined when we don't have public hearings.

NCRC appreciates the recent regulatory moves, such as the guidance regarding subprime lending, but these moves remain inadequate to create fair and competitive markets in working class and minority communities.

Since Federal agencies have had difficulties indirectly policing brokers, it is encouraging that the Federal and State regulators announced the pilot program. But let's remember that it really is a pilot program consisting of about 12 institutions.

And even if the Federal agencies rigorously implemented their recently—

Chairman WATT. You'll have to wrap up as quickly as possible.

Mr. TAYLOR. Okay. That's what I get for messing around at the beginning, Mr. Chairman. I will try and wrap up as quickly as possibly, and conclude in saying that while HMDA has been the powerful tool for rooting out discrimination, the HMDA data needs to include more key variables. Otherwise, the abuse of lenders will be a step ahead of the public and the regulators, inventing new methods for deceptive and usurious practices.

The agencies have inadequately used the existing tools in the arsenal to combat discriminatory lending. They must do a better job conducting Fair Lending reviews and processing merger applications.

The ultimate answer to all this, of course, is a National Anti-Predatory Lending bill, which you are very aware of, Mr. Chairman.

And, further, the HMDA data needs to be enhanced very quickly, including fee and price information, not just in high-class loans, creditworthiness of borrowers, loan terms whether their loans are fixed, whether they're ARMS; if they are ARMS, for what period they're fixed; a data field indicating whether the line was from a broker, a mortgage company, a depository institution; the age of the borrower's critical loan-to-value debt-to-income ratios.

And we support Senator Reid's bill that would create a foreclosure and delinquency data base.

In the interest that—we have a big panel, so I'm going to stop talking. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Taylor can be found on page 261 of the appendix.]

Chairman WATT. I thank the gentleman for his testimony.

And we now recognize Ms. Hamilton for 5 minutes.

STATEMENT OF GINNY HAMILTON, EXECUTIVE DIRECTOR, FAIR HOUSING CENTER OF GREATER BOSTON

Ms. HAMILTON. Thank you.

Mr. Chairman, and members of the subcommittee, thank you for this opportunity to discuss discrimination in mortgage lending and tools for Fair Lending Enforcement.

My name is Ginny Hamilton, and I am the executive director of the Fair Housing Center of Greater Boston. We were founded in 1998, and we work to eliminate housing discrimination and promote open communities throughout the Greater Boston Region.

We're a full service Fair Housing Center, and receive approximately half of our funding through the Department of Housing and Urban Development's Fair Housing Initiatives, or FHIP, and we're an active member of the National Fair Housing Alliance.

Discriminatory lending practices are particularly concentrated in our region, characterized by ongoing segregation, exorbitant housing prices, and below-national-average home ownership rates for African-American and Latino families.

I'm here to speak with you today about the ways in which our organization uses HMDA data and paired testing to document and address housing discrimination in Greater Boston. I'll also provide recommendations for Congress, the Federal agencies, and regulators.

HMDA data have long shown significant racial and ethnic disparities in mortgage lending. The staff and board members of the Fair Housing Center of Greater Boston have conducted numerous studies, analyzing HMDA data, and I wish to highlight three of them here. I've also included all of these reports as appendices to my written testimony.

Since the mid-1990's, the Massachusetts Community and Banking Council, a coalition of banks and community groups, including the Fair Housing Center, has published annual reports documenting disparities in the lending market.

The first report, "Changing Patterns," has shown consistently lower rates of lending to borrowers of color, both in the City of Boston and throughout Greater Boston.

Although there have been improvements in some areas over the 16 years documented by "Changing Patterns," lending to borrowers of color continues to lag behind lendings to whites. In recent years, there has been an increase in the ratio of loans denied to borrowers of color compared to white borrowers.

The second MCBC study, “Borrowing Trouble,” looks specifically at the rapidly growing subprime lending market. Again, the studies document that a disproportionately large percentage of these high APR loans go to African-Americans and Latinos, even those with higher incomes. 2005 data show that upper income African-Americans are 8 times more likely to have a high-cost loan than whites in the same income bracket, and that’s talking about households that make more than $152,000 per year.

The Fair Housing Center’s own study, “More Than Money,” used HMDA data to show that racial disparities in mortgage lending cannot be explained by affordability alone. In 80 percent of the cities and towns in Greater Boston, the number of African-American and Latino home buyers was less than half of what would be predicted by housing prices.

Findings from HMDA data, however strong and however suggestive, are not conclusive proof of racial and ethnic discrimination. The evidence that is clear and convincing comes from paired testing.

During the 4 months from October 2005 to January 2006, we conducted testing to determine the extent and nature of discrimination by mortgage lenders doing business in Greater Boston.

We used trained volunteers to visit 10 banks and 10 mortgage offices and report on details of their experiences. Testers of color were assigned a slightly higher credit score and higher incomes and slightly lower debt compared to their white counterparts, so, in a discrimination-free environment, the tester of color would be slightly more qualified for the home loan. Even so, as Congressman Lynch said earlier, we found differences in treatment, disadvantaging the home buyer of color in 9 of the 20 match-pair tests we conducted.

Two specific details from that. In 7 of the 20 tests, the white loan seeker received substantially more information from the lender about services or products. And in 5 of the 20 tests, the white tester was offered a discount on closing costs, which was not offered the tester of color or was quoted a substantially lower closing cost than the tester of color. The differences ranged from $500 to $3,600.

Currently, most lending cases are brought by private fair housing organizations, and these private efforts are important. But the full engagement of responsible government agencies is an essential component of any serious effort to combat lending discrimination in all its changing forms.

Lack of Federal enforcement actually provides a form of safe harbor for those in the industry engaging in discriminatory practice.

We at the Fair Housing Center of Greater Boston and my colleagues at the National Fair Housing Alliance believe that it’s shameful that the four bank regulators and the other agencies charged with enforcing the Nation’s fair housing laws have made such minimal and half-hearted efforts to identify and reduce racial and ethnic discrimination and mortgage lending.

We have recommendations for Congress to implement and oversee. First, we ask that Congress appropriate at least $26 million to HUD's Fair Housing Initiatives Program, and pass the Housing Fairness Act of 2007, H.R. 2926, to support fair housing and Fair Lending work in our communities.

HMDA data should be enhanced to include much more information, including the details John has already covered.

Congress should require Federal enforcement agencies, including HUD, the Department of Justice, and the FTC to undertake more aggressive, effective, and extensive fair lending enforcement activities.

Congress should require that Federal regulatory agencies use their authority to undertake stronger oversight and enforcement activities.

And finally, Federal Government agencies and bank regulators should make much more aggressive and extensive use of paired testing in their own enforcement activities and investigations by contracting and working directly with qualified fair housing organizations around the country.

Thank you, again, for this opportunity to testify before the committee. And I'm happy to answer questions and assist in any way that we can to help Congress fulfill your duties to enforce fair lending nationwide.

[The prepared statement of Ms. Hamilton can be found on page 114 of the appendix.]

Chairman WATT. Thank you very much for your testimony.

We now recognize Mr. Shelton for 5 minutes.

STATEMENT OF HILARY O. SHELTON, DIRECTOR, NAACP WASHINGTON BUREAU

Mr. SHELTON. Thank you very much.

My name is Hilary Shelton, director of the NAACP's Washington Bureau.

The Washington Bureau—

Chairman WATT. Pull that microphone just a little bit closer to you.

Mr. SHELTON. —Federal Legislative and National Public Policy arm, our Nation's oldest and largest grassroots civil rights organization.

I am very pleased to be here today to talk to you about the Home Mortgage Disclosure Act, or HMDA, and its use in uncovering trends of discrimination in home lending.

It is especially an honor to speak before Chairman Watt, who is indisputably one of the congressional leaders in the fight against predatory lending, and a champion of civil rights for all Americans.

I would like to thank you, Chairman Watt, Chairman Frank, Congressman Green, and our many other friends and distinguished leaders who are here today to help us try to find a way to eradicate this awful plague throughout our Nation.

Predatory lending is unequivocally a major civil rights issue of our time. As study after study has conclusively shown, predatory lenders target African-Americans, Latinos, Asians and Pacific Islanders, Native Americans, the elderly, and women at such a disproportionate rate that the effect is devastating to not only individuals and families but whole communities as well.

Predatory lending stymies families' attempts at wealth building, ruins people's lives, and given the disproportionate number of minority home owners who are targeted by predatory lenders, decimates whole communities.

High concentrations of subprime lending is a predominately racial and ethnic minority neighborhoods, and racial disparities, in subprime lending exists in all regions of our Nation. And while not all subprime loans are predatory, indeed NAACP recognizes the benefits of subprime markets to an informed constituency, which includes many without a strong traditional credit history.

It is estimated that the vast majority of predatory loans are those with owner's fees and/or conditions exist in the subprime market.

And while many of the facts that I have just shared with you are common knowledge in our communities, they are also, thanks to the Home Mortgage Disclosure Act, verifiable facts.

First enacted in 1975, HMDA was enacted to provide the public with data on mortgage lending patterns. Since that time, HMDA has become an individual tool to help the NAACP and other civil rights and consumer rights organizations in the fight to eliminate discrimination in mortgage lending.

As a result of HMDA, we have several seminal reports, including: the Center for Responsible Lending's 2006 report, "Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages," which uses the 2004 HMDA data; "Stubborn and Persistent" and "Stubborn and Persistent II," an analysis of the 2004 and 2006 HMDA data by the National Community Reinvestment Coalition; and "Risk or Race," the 2003 report by Calvin Bradford for the Center for Community Change, to name just a few.

As a result of these reports and their analysis of HMDA data, we can say conclusively that African-American and Latino borrowers receive a disproportionate share of higher-cost home loans, even when controlling for the factors, such as borrower's income and property location, and that this disparity rises as income rises as well.

And while it offers little solace to know that the anecdotal stories we have heard all along from our communities about unfair lending are true, it does help us deal with the problem.

Specifically, in addition to civil rights groups using HMDA data to focus national attention on lending discrimination issues, HMDA data is used by local municipalities when developing fair housing programs, and should be used by Federal banking regulatory agencies, the U.S. Department of Housing and Urban Development, the Department of Justice, and the Federal Trade Commission, to boost enforcement of fair lending laws.

HMDA data is also proving useful in litigation against unfair lenders, and is a key component in the case recently filed by the NAACP alleging systemic, institutionalized racism in subprime home mortgage lending.

Like most good laws, however, HMDA could be improved upon. Specifically, the NAACP feels that the data would be greatly improved if the age of the borrowers were included, as well as the type of credit.

The purpose of this second request is to determine if a mortgage broker was used as "steering" minorities to unaffordable loans, an especially prevalent problem in our communities.

The NAACP, in collaboration with some of our allies who do some of the most in-depth analysis of the HMDA data, would also like to see more detailed pricing and underwriting information for subprime lenders in their HMDA data. Not only would this provide us with more detailed information, but it would also help to discourage pricing discrimination.

Specifically, knowing the incidence of up-front fees, yield spread premiums, and pre-payment penalties would be significantly helpful in assessing the full breadth of subprime loans and who is receiving them.

Finally, the NAACP would like to see more enforcement on the part of the Federal Government as a result of HMDA data. Despite the clear evidence of discrimination, which is illegal, the Federal agencies that regulate insured depository institutions have done little or nothing to eliminate discrimination in the mortgage market.

Furthermore, the NAACP calls upon HUD and DoJ to enforce our Nation's fair lending laws—enforcement activities which have come to almost a standstill since 2000.

In closing, HMDA is an invaluable tool for many civil and consumer rights organizations, as well as Federal, State, and local regulators in identifying and fighting discriminatory lending practices, and the NAACP is pleased to testify in support of this crucial law.

I will take your questions upon your request.

[The prepared statement of Mr. Shelton can be found on page 252 of the appendix.]

Chairman WATT. I thank the gentleman for his testimony. I never heard you talk so fast.

[Laughter]

Chairman WATT. But your content was outstanding.

Mr. Solorzano is recognized for 5 minutes.

STATEMENT OF SAUL SOLORZANO, EXECUTIVE DIRECTOR, CENTRAL AMERICAN RESOURCE CENTER (CARECEN)

Mr. SOLORZANO. Thank you, Mr. Chairman, and members of the subcommittee, for the opportunity to participate in this panel.

My name is Saul Solorzano, and I work as the executive director of the Central American Resource Center, in Washington, D.C. As you may know, a large percentage of Latinos in the Washington, D.C., area have a Central American background.

Relevant to fair housing loans is that many Central Americans are in the United States under a temporary protective status known as TPS, or under other immigration laws that allow them to work legally in the United States, but do not give them a pass to permanent residency because their rights and they are potential victims of predatory lending in order of uses, including those for lack of language access.

CARECEN is a community-based organization that was established in 1982, and, since then, it has been providing direct services to over 5,000 Latinos per year in the areas of legal services, citizenship, housing, and other educational programs.

CARECEN is an affiliate of the National Council of La Raza. Our housing council will serve people who come to the offices with a variety of housing problems and questions, including the increasing rates of foreclosures, and their inability to sustain mortgage loans that, after accepting them originally, seemed to be a great deal, but quickly have turned into a nightmare.

Also, we refer potential cases of fair housing discrimination to the Equal Rights Center and the Washington Lawyers Committee for Civil Rights and Human Rights, here in Washington, D.C.

I have submitted written testimony to the committee, so in this presentation, I will only mention some of the main points in the statement.

First, I would like to explain how practices in lending victimize many Latino families and immigrants in Washington, D.C., Maryland, and Virginia.

It is not difficult to find real estate agents and others who will offer low interest loans, and other types of loans, without explaining the full implications of the options.

In many cases, these agents work with lenders, others, and intermediaries to cash in commissions without any regard for the victims.

As an example, people making $400 per month, preparing vegetables and salads in downtown D.C., are enticed to take on loans of over $300,000. Of course, after a few months, or whenever someone moves out of the house, people are left with large mortgage payments and lose their homes.

Another practice, or malpractice, is to overprice the homes and offer a first and second mortgage, with the second mortgage at a higher interest rate. Again, people with low salaries are approved for loans of up to $460,000 or more.

In Montgomery County, in Maryland, a Latino man working as a bartender and making no more than $45,000 a year, got an 80–20 loan, and a monthly payment of over $3,000. The man put the house up for sale, but after 3 months, we found a buyer. He moved out of the property.

I could go on listing case after case, but I think that I have shown you the impact of predatory lending on our communities.

Instead, I would like to raise another issue: Local ordinances, such as the one recently approved in Prince William and Loudon Counties in Virginia.

One of the concerns that I am perceiving here today is how fair housing and civil rights violations may escalate in some areas, where local ordinances to prevent overcrowding in homes will also have civil rights implications.

For example, standard families living in counties in Virginia could be the victim of forced foreclosure and displacement at the same time. Why? Because anti-immigrant activists are using zoning and other local ordinances to get rid of immigrants and non-immigrants Latino families.

As you can see, educational complaints from the community are an urgent problem. I hope the members of this community and the U.S. Congress will see how important it is to fund programs and initiatives to protect minorities and to eliminate predatory lending and other abuses in the mortgage lending industry.

In writing the statement, there are some recommendations that we think are important.

I thank you for the opportunity to speak about this pressing issue. Thank you.

[The prepared statement of Mr. Solorzano can be found on page 255 of the appendix.]

Chairman WATT. I thank Mr. Solorzano—see, that rolls off the Southern tongue better once I heard it—for your statement.

And we'll now recognize Mr. LaCour-Little.

STATEMENT OF MICHAEL LACOUR-LITTLE, PROFESSOR OF FINANCE, CALIFORNIA STATE UNIVERSITY AT FULLERTON

Mr. LACOUR-LITTLE. Good afternoon, Mr. Chairman, and members of the subommittee. My name is Michael LaCour-Little, and I am a professor of finance at California State University at Fullerton.

It's an honor to testify here today on the topic of the Home Mortgage Disclosure Act. My recent research paper, which is included with my written testimony, addresses aggregate patterns in the 2004 and 2005 HMDA data, and offers a forecast of 2006 results, which will be released later this year. Much of my testimony today will consist of highlights from that paper.

In addition, I am currently editing a special issue of the "Journal of Real Estate Research," on the topic of HMDA, and believe many of the papers contained in that volume will provide important additional information that policymakers should consider.

Last year's release of the 2005 HMDA data raised a number of questions given the increase in the number and percentage of higher-cost loans, or what I will refer to as HMDA spread-reportable loans, and the continued differentials across racial and ethnic groups.

My work, specifically, assesses three possible reasons for that increase, as well as proposing others. The three reasons evaluated include: Changes in lender business practices; changes in borrower credit profile; and changes in the interest rate environment.

Since the incidence of HMDA spread-reportable loans increased during 2005, it is tempting to infer that subprime lending must have increased proportionately. Indeed, the media and some commentators tend to equate HMDA spread-reportable loans with subprime. My research indicates, however, that relationship is not so simple.

It's important, also, to remember that the new HMDA data does not contain information on many of the factors that affect credit risk and the economics of the mortgage lending process.

As a result, the new HMDA data is sufficient neither to explain the pricing of loans nor to draw conclusions about pricing fairness.

At best, the bank regulatory agencies can use HMDA data as a preliminary screening tool to identify markets or institutions for further scrutiny.

Let me highlight several major conclusions of my research for you.

First: I did not find an increase in average borrower risk in 2005, though there does appear to be an increase in the use of riskier products, such as loans that allow negative amortization, and the average loan-to-value ratio did appear to increase for home purchase loans during 2006.

Second: The yield curve accounted for a significant part of the growth in HMDA spread-reportable loans in 2005.

Third: Wholesale originations played a major role in explaining the overall growth in HMDA spread-reportable lending.

Results reported in my paper suggests that after controlling for the mix of loan types, credit risk factors, and the yield curve, there was no statistically significant increase in reportable lending directly by lenders during 2005, although wholesale originations did increase.

My research identifies nine major factors that explain why a loan is HMDA spread-reportable: Loan size; term; property type; whether the line is an adjustable rate mortgage; credit score; loan-to-value ratio; origination channel; and the yield curve slope.

In addition, I find that the market price of risk increased by approximately 15 basis points during both 2005 and 2006, implying that rates were higher for all borrowers on a risk-adjusted basis.

Finally, let me offer a forecast for the 2006 results when they're released later this year. Given the change in interest rates, the likely mix of ARMs versus fixed, the increase in average LTV, and other factors, I predict that approximately 28 percent of loans will be HMDA spread-reportable.

I mentioned earlier the special issue on HMDA that will be published later this year. Included in that volume will be an article that examines the differential in annual percentage rates paid by minority versus white borrowers, controlling for the segment of the market in which the loan is obtained, credit risk variables, and other economic factors.

The paper utilizes a unique proprietary data set that includes over 1 million individual loan records from multiple lenders and many of the pricing variables that are not included in HMDA.

The authors find that raw disparities in the APR, which are in the order of 50 to 100 basis points, decline to roughly 5 to 10 basis points when appropriate controls for market segment and credit risk are included.

The authors remark, and I quote: "Public policies aimed at remediating APR differentials would achieve a far greater return through the elimination of race and ethnicity differentials in FICO scores, income, wealth that might be used to lower loan-to-value ratios, and, arguably, financial literacy, than they would through the elimination of any possible disparate treatment."

Mr. Chairman, I thank you for the opportunity to share these thoughts, and I'll be happy to answer any questions.

[The prepared statement of Professor LaCour-Little can be found on page 148 of the appendix.]

Chairman WATT. I thank the gentleman for his testimony.

I recognize Mr. Himpler for 5 minutes.

STATEMENT OF BILL HIMPLER, EXECUTIVE VICE PRESIDENT, AMERICAN FINANCIAL SERVICES ASSOCIATION

Mr. HIMPLER. Good afternoon, Mr. Chairman, Ranking Member Miller, and members of the subcommittee.

My name is Bill Himpler, and I am the executive vice president for Federal affairs at the American Financial Services Association. AFSA's 350 members include consumer and commercial finance companies, auto finance companies, credit card issuers, mortgage lenders, industrial banks, and other firms that lend to consumers and small businesses.

Mr. Chairman, I commend you and your colleagues for holding this hearing. We believe that HMDA is already working as intended. While other laws, such as the Equal Credit Opportunity Act, and the Truth in Lending Act provide a means for enforcement against lending discrimination, HMDA serves as an early warning system by identifying lending patterns that warrant additional investigation.

At the outset, let me state that the entire industry stands shoulder to shoulder with Congress and its commitment to combat lending discrimination. To that end, we believe there's a good story to tell.

Over the last 20 years, the industry has worked with policymakers and consumer groups as we've developed new technology that has allowed us to better serve consumers.

Prior to the 1990's, a consumer with blemishes on his or her credit record was essentially shut out from the dream of American home ownership. No one can argue that is the case today. Since 2002, 2.8 million families have become first-time home buyers.

At the same time, the mortgage industry is working with its community partners to meet a new challenge—the rise in defaults and foreclosures.

As part of my testimony, I've attached a summary of initiatives undertaken by AFSA member companies that help borrowers avoid losing their homes.

While all of us are concerned about foreclosures, we must not lose sight of the fact that more than four out of five subprime borrowers are making timely payments. As we discuss the HMDA data and ways to make our credit system better, we must be mindful of how any changes might affect liquidity. More importantly, we should allow the industry to provide manageable borrowing options for consumers facing reset or the possibility of foreclosure.

With that, let me turn to our assessment of HMDA's new reporting requirements. In 2005, lenders began reporting pricing information for higher-cost mortgages. Yet the HMDA data still did not contain credit scores or certain other information used to determine the credit risk associated with the loan.

This begs the question as to why Congress shouldn't expand the HMDA data to include this information. There are four reasons I'd like to speak to this afternoon.

First: An expansion would raise privacy concerns between HMDA data and other publicly available data. Already, the identity of borrowers can be determined. Many people would prefer that their neighbors not know their credit score.

Second: A requirement to collect credit scores in the HMDA data would raise the question of which credit scoring system to include. Fair Isaac's FICO score is the best known, but it's not the only one used. Many creditors make lending decisions based on their own proprietary scoring systems in addition to a FICO score.

Third: Lenders would have to divulge the weight that they give to different risk factors in pricing their loans, thereby eliminating any trade secrets that allow for vibrant competition.

And, fourth: An expansion of HMDA wouldn't necessarily increase its effectiveness as a screening tool.

If an expansion of HMDA data is not the way to go, what does AFSA recommend?

As I stated at the beginning, we believe HMDA is working as it should. Following its analysis of the 2004 and 2005 data, the Federal Reserve saw patterns that it felt needed more scrutiny. Referrals were made to fellow regulators. Investigations are underway as we speak.

We should recognize that this is the way the process is supposed to work. Regulators already have the authority to look at individual loan files. We must remember this and support their use of this when it is warranted.

In addition, we must be mindful of how any changes to HMDA might affect the industry's ability to provide borrowing options for homeowners facing reset or foreclosure. This is absolutely critical, given the current housing market.

Mr. Chairman, we stand ready to work with you as needed.

I want to thank you for inviting me to participate in this very important hearing. That concludes my statement, and I would be happy to answer any questions.

[The prepared statement of Mr. Himpler can be found on page 129 of the appendix.]

Chairman WATT. We thank you, Mr. Himpler, for your statement.

And let me thank all of the witnesses for their statements. The members of the subcommittee will now be recognized for questions, for 5 minutes each. And I will recognize myself first for 5 minutes.

As I have been kind of making notes here and reading the testimony, it seems that there are several recommendations that are being made that at least some of the witnesses here think would improve the information under HMDA.

Let me list those and see if I've missed any, because what I want to do is, in the second panel, ask—and I'm alerting them if they are here—the regulators their opinions about these.

Ms. Hamilton, I think, mentioned paired testing. If you're really going to get to a real evaluation of what's going on, on the ground, that's the only way to do it.

Coverage of brokers, I think either in the testimony or in the written testimony has been suggested, and extending the data required to—extending the coverage of HMDA to other lenders that are not currently covered by HMDA, and I guess, although we're talking about brokers not being lenders, but they need to be included in this equation. Extending the data required to be reported under HMDA, I think was a point that Mr. Taylor made.

And more aggressive enforcement by the regulators using the HMDA data, or at least more aggressive referrals and possibly more aggressive enforcement by the Department of Justice once the referrals are made.

Are there any that I have missed? As I made notes, did I miss any of the recommendations, generally, without getting into the specific content of them?

Mr. Taylor?

Mr. TAYLOR. Yes, Mr. Chairman. You may not have missed it, it may have been in your remarks. But, clearly, the fees and price information on all loans, not just high-cost loans, would be very valuable.

And then the creditworthiness of the borrowers. This can be done in a way to protect privacy, but that obviously would create, as my old friend, Phil Gramm, used to say, "It would create sunshine on the process of lending." So that would be very helpful.

Chairman WATT. Any others that I may have missed in the general summary, without specific details about getting into the details about it?

Mr. TAYLOR. Public hearings was the other on merger applications.

Chairman WATT. Public hearings on merger applications, and they go beyond current public hearings or what's the status on that?

Mr. TAYLOR. Unfortunately, public hearings are becoming a thing of the past. The last ones were in 2004, as I mentioned, and there have been some major merger activities, where this data and other information becomes very relevant and available. So that would be helpful.

Chairman WATT. All right. And I want to assure Mr. Himpler a bit. I'm not generalizing that everybody on the panel thinks that these are good ideas. I'm just summarizing the suggestions that are being made so we can ask the relevant questions about them.

Ms. HAMILTON. Mr. Chairman, one other detail I think worth considering is with regard to the complexity of brokered loans. These loans often involve offers then counteroffers. And technically, those would be rejections, but in many cases they might have been a better offer for the consumer.

So I think there's room, especially in the issue of dealing with brokers and community advocates should sit down and figure out what are the ways that information can be captured, because that market is changing. It makes a big difference in the outcome for borrowers in the end.

Chairman WATT. All right. In this brief remaining time that I have in my 5 minutes, can I get your thoughts about how brokers might best be included in the reporting requirement?

Ms. HAMILTON. I know in Massachusetts there has been some move at the State level to look for licensing, to have all brokers licensed, and, therefore, have to have an origination number be part of that loan process.

I don't know how that would play into HMDA, but that's one way of helping to track how a loan began and what that information is.

Chairman WATT. Okay. I think my time has expired.

And I'll recognize the gentleman from California for 5 minutes.

Mr. MILLER. Thank you very much.

I'm hearing from the four witnesses here that HMDA is demonstrating discrimination, yet Mr. Himpler, in your testimony, you have said that HMDA data is a useful tool, but it paints an incomplete picture regarding potential discrimination in the mortgage and lending process.

Can you explain the difference here?

Mr. HIMPLER. I think, essentially, going back to something that my friend, Mr. Taylor, mentioned with respect to adding additional credit information to the data set, it bears repeating, that with already existing HMDA data and publicly available recording records at local county seats, you can already identify, by comparing these two, in many instances, who the borrower is. So I don't know how, with adding any additional information, Mr. Taylor is going to be able to protect the privacy of those borrowers.

At the same time, we believe that going through the regulators who are able to look at individual loan files and identify patterns that deserve further scrutiny, is the proper method. It protects the privacy of borrowers, it protects the modelling systems of lenders, and it keeps competition very vibrant.

Mr. MILLER. Mr. Taylor, you said in your comments that HMDA has demonstrated clearly that there is discrimination in the marketplace. The only exception I had with your comments was when you said, "Skeptics must disprove discrimination." I don't think that's the response, but I think it's to prove discrimination.

But you have said HMDA clearly proves there is discrimination in the marketplace.

Mr. TAYLOR. Right. I think any fair analysis, in looking at the HMDA data, shows that there are really differences in treatment.

Mr. MILLER. But that's what we are trying to root out, isn't it?

Mr. TAYLOR. The number one reason given for why they say, "Well, it doesn't necessarily mean discrimination," is this issue of credit scoring data. They say, "Well, you don't know what the credit scores are."

Mr. MILLER. But HMDA's—

Mr. TAYLOR. The problem—

Mr. MILLER. —HMDA's—I only have 5 minutes.

Mr. TAYLOR. Yes, sir.

Mr. MILLER. HMDA's supposed to demonstrate if there's a problem in discrimination. And the regulators are supposed to review that information and then go to the lender and say, "These are the documents we have proving discrimination," and then they really have to prove there was not. Is that not fair?

Mr. TAYLOR. Yes. In fact, the regulators sitting behind us here, have actually more information than we have in HMDA data. They have the loan files. They have—

Mr. MILLER. Because a lot of it's privacy. I know that.

Mr. TAYLOR. No, no. They have the loan files that they can look at. Even the financial institutions.

Mr. MILLER. I know they do.

Mr. TAYLOR. They actually have a lot more data where they can ferret out, follow the HMDA data trail, to these loan files and see if there are discrepancies.

And the problem is, they actually have done that. The Federal Reserve identified 470 banks, which, by the way, in terms of assets, constitutes the majority of lenders in the United States, as in the last 2 years, as having some reasons that we need to look further as to why these discrepancies exist.

Mr. MILLER. Okay. Thank you. And I think that's where I'm trying to get to.

Mr. TAYLOR. Yes.

Mr. MILLER. Also, Mr. LaCour-Little. I'm not sure which one you prefer to be used.

But you agree, essentially, with the Feds that the new HMDA pricing data are helpful but cannot be used alone to draw conclusions about the appropriation, but their pricing exists. Can you explain how the pricing data is helpful?

Mr. LACOUR-LITTLE. Well, the pricing data can indicate raw disparities, but unless one looks at the additional factors that affect loan pricing or the incidence of higher cost loan pricing, you can't determine whether those differences are related to race.

Mr. MILLER. So HMDA data might, if you just take it on the data form, might make you think something exists that really didn't until you get into the data the lender might have in their file?

Mr. LACOUR-LITTLE. I think that's correct. It's widely recognized by professional economists that HMDA data produces a lot of what we call false positives, indications of something that isn't really there when you look more deeply.

Mr. MILLER. Well, Chairman Watt and I, along with Chairman Frank and many others have been wanting to do something on predatory lending, and I have co-authored many pieces to deal with that.

But, Mr. Himpler, can you describe the mortgage market before this pricing and subprime lending existed, and weren't some families absolutely left out of the marketplace because their credit profile was not stellar?

Mr. HIMPLER. Absolutely, Congressman. As recently as the 1990's, actually just prior to the 1990's, we were dealing with a credit system that was essentially an on-or-off switch.

You either made it through the front door of home ownership because you had pristine credit or you were shut out altogether, for all intents and purposes.

We now have a much more vibrant system that can price for risk that allows lenders to go deeper into the market to serve more and more consumers to price effectively and move folks into home ownership. And then, ultimately, up into less risk-layered forms of lending.

Mr. MILLER. Thank you. I see my time has expired.

Chairman WATT. The gentleman from Massachusetts, Mr. Lynch, is recognized for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman.

I'd like to ask a couple questions here, and the panel can feel free to answer as they see fit.

While we're talking about HMDA's, I'd say, static measurements—let me put it this way.

HMDA; the goal is to create a level playing field where racial discrimination is rooted out, and we create a level playing field.

The Community Reinvestment Act, on the other hand, requires something further. It requires lenders to affirmatively reach out into areas or populations that are underserved and to root out the discrimination that's out there.

Mr. Taylor, at the end of your report, it was long and you didn't get to read it all, but at the very end you talked about something that we've been working on here, which is, under the CRA when it first started out, banks were making most of the lending decisions. They were generating most of the loans.

Now the trend has been, private mortgage companies and credit unions making—you know, the share that the banks were doing is shrinking over time, so the money going into the CRA initiative is dwindling.

And you mentioned that at least some of the large credit unions and some of the large independent mortgage brokers should be brought in under the same requirement. I know in Massachusetts, and Ms. Hamilton knows and Mr. Taylor knows, that we have a State law that requires that.

But I do notice that on the second panel, we have the director of the National Credit Union Administration, David Marquis, who is going to step up.

And I was wondering if you would have some recommendations to him and to the regulators here about the whole issue of resources coming to this problem. I mean, we can tighten up the measurement, of course, to induce compliance so that we can root out as much discrimination as we can, but if the resources aren't there to get into these neighborhoods and these populations that are not served, I'm afraid it's not going to be enough.

And I'd just like to hear the panel's response and recommendations.

Mr. TAYLOR. Thank you. I think you're absolutely right, Representative Lynch, about a number of points that you've made.

But in a lot of ways, the private, independent mortgage makers, that segment that makes these mortgages outside of the banking industry is shrinking rapidly because of some of the unsavory practices that occurred. And even when they were doing a lot of their business, a lot of that still involved banks that were securitizing it or buying them as tranches of loans, that they package and re-sell. So it's not like the banks were divorced from this.

But, clearly, we want more consumers into the mainstream financial institutions, frankly, because their basic banking services are more competitive and better than payday lenders, pawn shops, and check cashers as a way for basic banking services, but also because of CRA.

As you have pointed out, the banks have an affirmative obligation, and that's the language of the law, to serve the credit needs of underserved people, including low- and moderate-income communities. It is appalling to me that the credit union industry does not embrace this concept.

You are going to hear—I mean, I've seen some testimony where some of the associations for the credit union's going to brag about how they're doing 2 percent more to people under $40,000 income in terms of loans.

But the truth of the matter is, when you look at minorities, and you look at women, they're underserved in the credit union industry compared to banks.

Banks weren't created to serve people of small means. That's the language from the Credit Union Act when it was created. It was created to serve people with small means. And the credit unions will get up and brag about how they're slightly beating the banks in this area, but, in fact, they are way behind the banks in other areas.

And the Credit Union Administration ought to be coming to this hearing saying we embrace and we support what our colleagues and the other agencies embrace and support, and that is a strong CRA. And we hope that law does get expanded to them and to others who are in the mortgage business, because it's good business to have an affirmative obligation to make sure that competitor products are going to working class Americans as well.

Mr. LYNCH. Ms. Hamilton?

Ms. HAMILTON. I think one thing we need to watch for in looking at the improvement that CRA has brought, and I see in my neighborhood, banks that are now in a central city neighborhood that weren't there 15 years ago.

What we need to look at, though, is how the corporation as a whole is using their services and selling their products. Are they marketing different products in predominately African-American or Latino communities than they are in predominately white neighborhoods? Are they only setting up a subprime affiliate in an urban neighborhood and the prime affiliates in the suburban neighborhoods?

And, right now, the way regulations happen, those affiliates are examined on their own rather than the entire corporation being looked at.

So each affiliate could be treating all their applicants fairly, but the overall corporation's lending is highly unfair.

Those sorts of pictures can be found looking at HMDA data and looking at practices if regulators are doing assertive looking.

Mr. LYNCH. Mr. Chairman, I don't want to abuse my privilege.

Chairman WATT. I thank the gentleman, and the gentleman's time has expired.

The gentleman from North Carolina, my North Carolina colleague, is recognized for 5 minutes.

Mr. MCHENRY. I thank the chairman, my colleague and friend and neighbor.

Mr. LaCour-Little, can you discuss why borrowers have different rates? I think this is important in the context of this discussion.

Mr. LACOUR-LITTLE. Of course, Congressman. The most important determinant of mortgage rates is, of course, the prevailing level of interest rates. But to that level, lenders add credit risk spreads to reflect factors such as the borrower's credit score, the loan-to-value ratio with the particular product that's been selected, the purpose of the loan, whether it's a refinance or a home purchase loan.

All of those factors have been shown to determine credit risk and default rates over time, so lenders add risk spreads, risk premiums, to the base rate to reflect those characteristics.

And I should mention, too, Congressman, that if the loan is originated through a mortgage broker, that mortgage broker will also mark up the loan.

And in some other research that I've done I find that loans originated through a mortgage broker cost consumers about 20 basis points more than loans originated directly by lenders.

Mr. MCHENRY. But also the key point of that is underwriting standards. Is that correct, going to the cost of the mortgage?

Mr. LACOUR-LITTLE. Well, underwriting really reflects the accept/reject decision, whether the lender is willing to make the loan or not, and then the pricing of the loan is a separate issue. HMDA data has traditionally been used, both to consider disparities in approval rates by race and ethnicity. And now, with the new pricing data, disparities in the incidence of higher cost or HMDA spread-reportable lending.

Mr. MCHENRY. Now, are certain borrowers—within your research, have you found that certain borrowers are more willing to shop than others? Have you come to any conclusions on that?

Mr. LACOUR-LITTLE. Well, that's outside of the scope of the research that I did for this project. But I believe there has been research that suggests that lower income and lower credit scoring borrowers are less aware of the options available to them, and they may shop less diligently, and they're just more vulnerable, as I think the committee recognizes.

Mr. MCHENRY. And that goes to your mentioning of financial literacy—

Mr. LACOUR-LITTLE. Yes.

Mr. MCHENRY. —in some respects.

Mr. Himpler, you said in your testimony, you discussed about numerous weighting differences within underwriting, within the mortgage industry, different companies have different weighting standards to find how they can be profitable with a certain type of mortgage and things like that.

Can you explain to me this weighting system and how that gives a competitive advantage? This is something that we have not heard about too much before this committee.

Mr. HIMPLER. Essentially, weighting refers to the types of considerations the different lenders give to different risk factors, particularly to credit score. As I mentioned in my testimony, there's a FICO score. We also have the three credit bureaus that each have their own scoring system.

A number of lenders will use one score from the Bureaus or FICO more weight than another, or a combination of the two, or an average, or the mean.

In addition, a number of major lenders also have their own proprietary scoring system. They might use that in isolation or they might use that in combination with the Bureau's scores. Their staff has essentially made the calculation that the weight that they give puts them at the best advantage to price the loan effectively, to serve the consumer best in terms of making access to credit loans most affordable.

Mr. MCHENRY. And some level of assurance that they'll be able to repay the loan.

Mr. HIMPLER. Correct.

Mr. MCHENRY. There has been a statistic that we've seen before the committee that it costs roughly $50,000 for the lender. A cost of $50,000 for every foreclosure. That's nationwide.

You know, a lot of discrepancies here within the testimony on your conclusions based on the data we have.

Well, there's an overall question within the mortgage industry that we need to ask, and I'll do this in conclusion. If you all could simply answer, "yes" or "no" and maybe a sentence, but no more. And if we could start with Mr. Taylor.

Do you think the disclosure statements that Congress mandates and the regulators mandate are effective at allowing consumers to understand the products they're about to purchase? Meaning, would it be helpful if Congress put forward, for instance, a one-page disclosure statement, giving all the essence of a mortgage and what is necessary for all to know? Pre-payment penalties, percentage, interest rate, and things of those sort.

You can just answer briefly.

Chairman WATT. The gentleman's time has expired, but I'll allow each of the witnesses to answer very quickly.

Mr. TAYLOR. I'm terrible at single sentences.

[Laughter]

Mr. TAYLOR. But I will say that it is very difficult for people to understand in the mortgage closing process all the details and data and information and documents, and that what needs to really occur is a system that creates responsibility on the part of the professional to ensure that the borrower understands what he or she is getting into and what all those documents mean and how it impacts them.

I think that's a sentence.

Chairman WATT. Ms. Hamilton, I hope your sentence is shorter.

Ms. HAMILTON. I think a clear Disclosure Statement that does not change at closing would also be something helpful to avoid the bait-and-switch tactics that we hear happen all the time.

Mr. SHELTON. I agree with the same thing as both of the previous speakers—the need for more information, more disclosure.

Mr. SOLORZANO. Same here.

Mr. LACOUR-LITTLE. I think disclosures can certainly be improved, but I'd point out that these are very complex contracts, and improving them is not going to be a simple task.

Mr. HIMPLER. The industry stands fully shoulder-to-shoulder with this Congress in wanting to make sure the borrowers understand the mortgage process that they're about to undertake, so disclosure would be a good thing.

Chairman WATT. I thank the gentleman. The gentleman's time has expired.

The gentlelady from New York is recognized for 5 minutes.

Ms. MCCARTHY. Thank you, Mr. Chairman. I appreciate the testimony of everybody.

As we've been hearing in the papers and on TV, we're seeing more and more foreclosures coming forward. This morning on one of the news shows that deal basically with just business issues, we saw that the percentage of people making late payments has dramatically increased, even among those on the higher and middle incomes, and mainly because they brought or bought creative mortgages.

What you have mentioned earlier, Ms. Hamilton, was talking about the mortgage brokers and how Boston or Massachusetts was looking on licensing.

We've had that discussion on one of our other committees, mainly because if the State just does the licensing, that person can leave that State, and then go to another State and do the same harm in another part of the country that they might have done in your own State. So that's something that we're looking into, which I think is important for us to do.

But, with that being said, I have several minority communities in my district, and in the majority of them, they don't even have banks. That's one of the things that we have been fighting for, to bring banks into the communities.

So, with that, I mean with the mortgage brokers that are out there, or others, where are they steering my constituents to get their loans because we all have our problem with predatory rates.

So anyone out there that wants to try to answer; I know there are three questions in there.

Mr. TAYLOR. I will say this. I think you've tapped into a very, very critical thing and another part of the regulatory failure here, is over the last 3 decades, without much problem whatsoever, mainstream financial institutions have been able to close their branches in a lot of these neighborhoods.

And, as Ginny Hamilton mentioned earlier, in Boston what we did is we actually worked, in fact, in concert with the Massachusetts Banker's Association and with the regulators and others, and the banks, to try to get them to commit to open branches, because it really, really matters.

Where you see some of the worst discriminatory practices, in those areas where there isn't the kind of mainstream full service access that is brought by a financial institution, part of the exam, the CRA exam of banks, 25 percent of their grade is what's called the service test.

Primarily, what is the history of opening and closing branches in underserved neighborhoods. It's not a fact by the—it's not something they really—and they're not going to like this, but it's not something they really look at, because these banks are able to close their branches willy-nilly, and is having a real disparate impact on neighborhoods in terms of not just whether they're subprime or predatory loans but basic banking services to having them come from check cashers, pawn shops, and payday lenders, instead of full service branches.

So this is a critical issue. I think it's important for all of America that the mainstream financial institutions that will treat people more decently, at least historically, than some of these other actors, that they need to be back in these communities.

And what we need to do is to influence the regulators and create laws to make sure that they're profitable and competitive in these communities.

Mr. HIMPLER. Ms. McCarthy, if I may, you mentioned at the outset the articles you have been seeing or the TV reports for default in payments. We recognize that's a very real issue. I'd be remiss if I did not implore this committee, as we see these reports come in, that the committee exercise restraint.

The regulators that you'll hear from on the next panel issued non-traditional mortgage guidance last year that tightened up credit. More recently, they have issued a statement on subprime to their examiners that calls for underwriting loans at a fully-indexed rate.

They are doing the right things. We ask that you give the regulators time to see how that plays out.

The last thing that we need, as an economy, is to tighten liquidity further when folks, like your constituents, are facing defaults and an increased possibility of foreclosure.

Ms. MCCARTHY. I agree with you. But, I mean, we did have a hearing on this, and, you know, we met with a number of the bankers and everything and, certainly to their own, they want to make sure their reputation is out there. They don't want to go into the business of foreclosure. And, as far as the economy goes, I mean, this is going to hurt us into the year 2009, they're saying now.

We had the first wave. They're afraid about the second wave, which is actually starting sooner, I think, than everybody even thought.

So I think I go back to what Mr. Taylor had mentioned. It would be in the best interest of the financial institutions, the banks, to come into the communities to make sure that good packages are being put into those particular communities. They should have been regulating, or even bringing it up, about these specialty mortgage brokers, and I'll even say that to the regulators.

They knew this was going on. Why did they wait so long to step forward to say, "Hey, we're going to take care of this." It's a little bit too late for an awful lot of people.

Ms. MCCARTHY. I yield back the—Ms. Hamilton?

Ms. HAMILTON. I just want to share a quick story from one of the actual test incidents as we did, where we had an African-American tester go into a prime bank, a mainstream bank, and the bank representative told her that the bank usually dealt with commercial lending and did not really provide residential mortgages, and as part of other information, including—even though her credit score was good, that closing fees would be $8- to $9,000 for the loan she was looking to make.

Two days later, the white tester, with a lower credit score, was told by the same bank that they provided home mortgage loans and was immediately given information about how she could work with them.

So certainly, the locations and the CRA work are important, but it doesn't stop the discrimination from happening unless we're looking at the discriminatory behavior happening in incidences.

And those are real people, real people who are discouraged by that interaction, and, therefore, more likely to go to another broker who's going to tell them, "Sure, I'll give you a great deal, your credit score's wonderful."

Chairman WATT. The gentlelady's time has expired.

This is an extremely important issue that has substantial implications in a number of communities around the country. And, for that reason, I'm pleased to welcome to the subcommittee's hearing three members who are not on the subcommittee itself, two of whom are on the full Financial Services Committee, but do not serve on the subcommittee.

And I'm pleased to ask unanimous consent that they be allowed to ask questions. Without objection, I will then recognize Mr. Green for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman, and I thank the witnesses for appearing today.

Let me start by indicating that there's a term called "voir dire" or "voir dire," depending on where you're from. In Texas, we say "voir dire." It is a French term, and it means to speak the truth. And I have found that it is very helpful to approach large numbers of persons with the process that we use in "voir dire" or "voir dire."

So I'd like to ask questions to you as a panel, and that way I can get more answers within a shorter period of time.

Let me start with something that I believe to be the case, but because I have friends that I have debated with through the years and did not ask early on what their position was, I found that I was entirely wrong, and, as a result, I should have been debating another point.

So let me start with the question, does everyone agree that invidious discrimination exists in lending? If you agree, would you kindly extend the hand into the air?

[Hands raise]

Mr. GREEN. Okay. You may lower your hands.

Now, let's go to the very end. Mr. Himpler, you do not agree that invidious discrimination exists in lending?

Mr. HIMPLER. I think that it's—you can't argue that there are no incidents of discrimination. I'm not sure that I would characterize the entire lending system, as—

Mr. GREEN. Let me continue, and let's agree that we're not talking about all lenders, but that it exists in lending institutions to the extinct that it is abhorrent and ought to be eliminated. Do you agree that invidious discrimination exists?

Mr. HIMPLER. That there are incidents of invidious discrimination?

Mr. GREEN. Yes, sir.

Mr. HIMPLER. I would agree with that.

Mr. GREEN. And let me go quickly to Mr. LaCour-Little.

Do you agree? I didn't see your hand go up.

Mr. LACOUR-LITTLE. Yes. Certainly—

Mr. GREEN. Could you bring that microphone closer, please?

Mr. LACOUR-LITTLE. Yes. Certainly individual instances of disparate treatment are an important concern.

Mr. GREEN. For edification purposes, invidious discrimination is actionable discrimination, that which one can be sued for in the context that we are talking about today.

Do you agree that kind of discrimination exists in lending?

Mr. LACOUR-LITTLE. There certainly could be individual cases that—

Mr. GREEN. You said, "could be," so I assume that you're not—you don't have the empirical data, but your suspicions are that it may not exist if you say, "could."

Mr. LACOUR-LITTLE. That's not my focus, Congressman. As a professional economist, I look at aggregate patterns and data, and I don't see aggregate evidence.

Mr. GREEN. Do you agree that some exist?

Mr. LACOUR-LITTLE. I agree that there could be individual—

Mr. GREEN. Could be.

Mr. LACOUR-LITTLE. There may be.

Mr. GREEN. All right. Was there someone else who did not extend their hand? If so, raise your hand now.

All right, sir. Do you agree that invidious discrimination exists?

Mr. SOLORZANO. Yes, I do agree.

Mr. GREEN. Okay. Thank you.

Mr. SOLORZANO. I was too slow to raise my hand.

Mr. GREEN. Okay.

It's important to understand this because when you get a better understanding of where people are, you get a better understanding of where the debate really is.

And now, I'll have to use just a bit of my time to explain something that I probably shouldn't have to explain. But I heard this commercial recently that indicated that a certain thing that took place took more than an act of Congress. It took our Congress willing to act.

And many things take weight power, but they also require willpower. And to have the willpower to do something necessarily, one must conclude that something must be done. So if you don't conclude that there is a need to do something, then there's a good likelihood that you won't be about the business of doing whatever it is that others may see as needing to be done.

With this said, to the economist, I would ask, sir, do you believe that we can construct an acid test, that we shall call HMDA data, an acid test that will reveal whether or not invidious discrimination exists?

Mr. LACOUR-LITTLE. Well, Congressman, I think it's not related to HMDA data, but I think the sort of matched pair testing that the witness from Boston—

Mr. GREEN. Let me just say this, if I may quickly.

Mr. LACOUR-LITTLE. Yes.

Mr. GREEN. There are many occasions when persons have finished, and I don't know whether they have said "yes" or "no." So let me just ask you this way: Yes or no, sir; can we construct an acid test so as to indicate to us whether or not invidious discrimination exists? Can such a test be constructed?

Mr. LACOUR-LITTLE. Not using HMDA data.

Mr. GREEN. Well, let's not call it HMDA. A rose by any name smells just as sweet as far as I'm concerned.

Whatever—by whatever name can an acid test be constructed such that we can determine whether invidious discrimination exists in lending?

Mr. LACOUR-LITTLE. Again, I believe that the matched pair testing of the type described by Ms. Hamilton is—

Mr. GREEN. Would that—

Mr. LACOUR-LITTLE. —the best approach.

Mr. GREEN. —would that be testing? Is that right?

Mr. LACOUR-LITTLE. Yes.

Mr. GREEN. Okay. Now, let's talk about the—

Chairman WATT. Unfortunately, the gentleman's time has expired.

Mr. GREEN. Can I get one additional question, Mr. Chairman?

Chairman WATT. I ask unanimous consent for one additional minute for the gentleman.

Mr. GREEN. Okay. You are aware that to perform the testing of which you speak, we would have to change the Federal law because you cannot file applications for testing beyond the pre-application phase, which means that we're now back to something that ought to be done, that can't be done, because Federal law prohibits it from being done.

And perhaps I won't ask a question. I'll just leave you with that comment.

Thank you, Mr. Chairman. You were more than generous.

Chairman WATT. Thank you very much for participating in this important hearing.

The gentleman from California, Mr. Baca, who chairs the Congressional Hispanic Caucus, is recognized for 5 minutes.

Mr. BACA. Well, first of all, thank you very much, Mr. Chairman, for having this important hearing and for your leadership of one an equality and fairness in this area, because we need to wipe out mortgage discrimination and predatory lending once and for all, and we must do more to protect our families. And thank you, you know, for being a leader there.

I'd like to address a couple of things, not only as chair of the Congressional Hispanic Caucus, and a member of this committee, but, according to the 2005 HMDA data, 52 percent of African-Americans and 40 percent of Latinos are in high-cost subprime loans compared to 19 percent of whites.

For Hispanics, almost 20 percent who receive high interest, subprime loans, are likely to go into foreclosures, and data shows that 73,000 out of 375,000 subprime loans made to Hispanics in the year 2000 are more likely to end in foreclosure. In my district alone, the foreclosure rate is 3 times higher than it was just 1 year ago.

And, for the record, I'd like to enter this newspaper article that came out by the Riverside press, "Inland default notices see sharp rises." It's alarming to us when we have the largest growth, we have the biggest attractions, and we have the housing development, and everybody is moving into the Inland Empire, both San Bernardino and Riverside, yet there are high numbers that we see in terms of foreclosures.

I'd like to ask my first question to Mr. Shelton. Can you talk about some of the studies that have been based on HMDA that show racial discrimination in predatory lending?

Mr. SHELTON. Yes. Let me just say that the study that we found to be most enlightening was the study by the Center for Responsible Lending, entitled, "Unfair Lending: The Effects of Race and Ethnicity on the Price of Subprime Mortgages."

This is a study that was done May 31, 2006, and, of course, was based on 2004 HMDA data. It clearly pointed out that racial discrimination is very much a part of the landscape.

There are a couple of other studies I think will be very helpful for the community to consider.

The National Community Reinvestment Coalition has a study entitled, "Income is No Shield Against Racial Differences in Lending," dated July 2007. And this uses 2005 HMDA data as well, clearly establishing the same point, that, indeed, racial discrimination occurs in the lending process.

The last two I would just throw out for your consideration. A study by Calvin Bradford for the Center for Community Change, called "RISK" or "Race," which was done in 2003.

And a study by ACORN in 2004, called, "Separate and Unequal Predatory Lending in America, 2004," was also published in 2004.

Each of these studies points to the same conclusions, that, indeed, based on HMDA data, we're able to establish that, indeed, discrimination occurs in the lending field, home mortgages, across the board, particularly looking at African-Americans and Latinos.

Mr. BACA. Thank you for your testimony.

The next question I have is for Ms. Hamilton.

In your lending testing described in "The Gap Persists," what type of discrimination did you find against Latinos, and what did your organization do to follow up on the discrimination you found?

Ms. HAMILTON. For the test, we conducted five pairs matching a Latino tester and a non-Hispanic white tester. In two of those, we found evidence of discrimination.

Differences included different quotes on the monthly payments they would have, also giving more information to the white tester about all of the costs involved in the process, and different advice about how to work with better loan products when you have a midrange credit score.

The white loan seeker also got a lot of informational literature about the products and follow up e-mail information, whereas a Latino loan seeker didn't receive any of that information.

In the second case, we saw—this was at a bank rather than a mortgage company, and the white home seeker was told about more loan products, was encouraged to submit an application as soon as possible, and there was no application conversation with the Latino home seeker.

Again, the white home seeker was given lots of pamphlets about different mortgage products, a guidebook about mortgages, a work sheet for calculating mortgage costs, and the application, and the Latino home seeker was sent away with none of this information.

Mr. BACA. One final question that I have: How do you think that the Federal banking regulators and the Federal enforcement agencies could make more of an impact in fighting discrimination against Latinos and other protected classes?

Ms. HAMILTON. I think the data that is here, the cases that have been referred by the Feds, should be aggressively investigated. They should be looking at that data, looking at those files, and partnering with Department of Justice, HUD, and HUD-funded agencies, such as my own, that do testing, to use testing as part of the process to see whether or not the behavior in the banks towards actual loan seekers spells out what the data is showing.

Mr. BACA. And plus more accountability from us in Congress to hold them accountable, of course, right?

Ms. HAMILTON. Of course.

Mr. BACA. Okay. Thank you.

Chairman WATT. The gentleman's time has expired.

The chairman recognizes the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Mr. Chairman, let me thank you. I am a total guest. In as much as I am not a member of the full committee, let me thank the chairman of the subcommittee, Mr. Watt, and, of course, the ranking member for their generosity.

I was confronted this morning by the same news that continues to ascend to, I think, the crisis level, which is, don't think you can rest on your laurels. These foreclosures will continue into 2009. That's a long period of time to watch the mountain collapse, probably the number one asset of most Americans, and that is their home.

Coming from Houston, Texas, we have been on this cycle before, but it was economic. When the energy industry crashed in the 1970's, we saw the massive walk-away of people who only wanted to have the American dream and to have a job. But the industry collapsed.

I saw the same kind of spiraling disappointment in the massive surge of effort to reform the bankruptcy laws, to, unfortunately, after 7 years of fighting, we lost the battle. And I have heard from not only bankruptcy lawyers but individuals who are in the Bankruptcy Court, but bankruptcy judges, who said that that legislation had enormous negative impact on people being able to retain their assets.

Let me give two themes that have been used.

Generally, all money is green, and the privileges of due process. We all have a right to know our rights.

And I notice, Mr. Taylor, in your comments, the interesting thing is the lending disparities for African-Americans were large and increased significantly as income levels increased.

That looks like the most attractive person that you could ever have. Here comes someone with a check, with money, with debt. Hispanics also experience greater disparities in high-cost lending compared to whites as income levels rose.

I'm not going to go to you first, but I am going to ask the distinguished gentleman, Mr. Himpler, at the end, to ask the question, as this committee moves forward, they will have the legislative jurisdiction.

And we see the improvements that came after the Community Reinvestment Act, but we've seen some diminishing of its power.

Would you welcome racial factors and racial criteria that the lending entities would have to meet based upon this preliminary data, and it is research by non-governmental entities. But would you welcome the fact a cure for what seems to be an obvious and conspicuous discrimination?

Not that someone would have to go and file a lawsuit, but would you welcome the industry, this particular home-lending industry, this component of the financial services industry, to have to use and have to be tested and have to assess racial criteria, how many loans they gave, what kind of loans they gave based on race, age, and African-American, Hispanic, and if there are other distinctive groups, Native American.

Mr. HIMPLER. Well, Congresswoman, with respect to the example you cited with different borrowers with different incomes, with minority borrowers with higher incomes ending up with higher interest rates, it gets back to a very basic point in my testimony earlier, that the HMDA data does not contain credit information. Our lenders do not make credit decisions based on income alone.

At the same time, that begs the question, I understand, of why not to include credit risk information.

Ms. JACKSON LEE. And since my time is short, my question is, there are high income that get discriminated against, therefore, it seems obvious on the face it's race. Would you welcome that additional indicia that you have to report on, rejecting a high income person of a different race?

Mr. HIMPLER. I think to a large extent the data set that we report under HMDA, that ultimately goes to the regulators, was put to that test through the examination process.

Ms. JACKSON LEE. Mr. Taylor, can you more—thank you very much—refine—give me a more refined answer.

Can we work with those parameters? We seem to have high income persons. That's a good litmus test.

Mr. TAYLOR. Right.

Ms. JACKSON LEE. When we send the low income folk in, somebody has an excuse. High income, they are discriminated against. How can we solve that? And I know there's a list of criteria.

Mr. TAYLOR. We need more sunshine in this area. I mean, what's odd about this conversation, to me, is they say, well, HMDA doesn't quite show that there's discrimination. Then we say, all right, well, let's get the data that shows whether it exists or not. And then, through discovery, you can go through the process of court cases that really reveal what's really going on. But they don't want to do that, and they don't want to do that because they—we all know why they don't want to do that.

And I liked the distinction you brought about in Texas, and especially in Houston. You've been through this before. But what happened in those foreclosures is that people lost their income.

Ms. JACKSON LEE. They lost their income.

Chairman WATT. The gentlelady's time is expired.

Mr. TAYLOR. Does that mean my time is?

Chairman WATT. Finish your answer.

Mr. TAYLOR. Okay. See, they had the foreclosures, and this is an important thing for us. The foreclosures are primarily relating to a change in product, not a change in income. And that ought to give people pause for concern.

We have a vibrant mortgage system, but it's not as vibrant as it used to be. Wall Street is shaking from these mortgage backed securities and CDOs that are absolutely causing havoc on the market.

If we don't recognize that we need to do something for the good of all of America to change the system, to make it more accountable, to make it fairer, and to ensure that people are able to stay in their homes, we're going to have this problem again in the future.

Ms. JACKSON LEE. I thank the chairman and I thank the witnesses.

Chairman WATT. And I thank the members for their attention, both members of the subcommittee and members who are not on the subcommittee.

I thank the panel of witnesses for your testimony and for being responsive to the questions. I think you have helped to frame this discussion in a way that helps us going forward to the second panel. So let me express the thanks of the subcommittee and ask the second panel to come forward.

Mr. TAYLOR. Thank you, Mr. Chairman.

Chairman WATT. If we could encourage those in the audience to conclude their conversations so that we could move to the second panel, that would be most appreciated.

I would like to start by thanking the members of the second panel for being here. I know it is somewhat out of the ordinary to reverse the order of the panels, but we thought we would try it to try to frame some of the issues that are being raised so that you could more effectively talk about those issues and perhaps get to a constructive set of responses.

So we thank you, especially those of you who came and heard the first panel. We gave you the option of not having to do that if you chose not to, so as not to take up your time, but I think most of you were here, and I'm most appreciative of you doing that, and even more appreciative of your being here to testify.

I will now introduce the members of the second panel:

We have Ms. Sandra Braunstein, Director of the Division of Consumer and Community Affairs of the Board of Governors of the Federal Reserve Board; Ms. Sandra L. Thompson, Director of the Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation; Ms. Montrice Yakimov, Managing Director, Compliance and Consumer Protection, Office of Thrift Supervision; Mr. David M. Marquis, Director of the Office of Examination and Insurance, National Credit Union Administration; Mr. Calvin R. Hagins, Director for Compliance Policy, Office of the Comptroller of the Currency; Ms. Grace Chung Becker, Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice; Ms. Kim Kendrick, Assistant Secretary, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development; and Ms. Lydia Parnes, Director of the Bureau of Consumer Protection, Federal Trade Commission.

I thank you on behalf of the subcommittee.

And before I recognize Ms. Braunstein, let me ask unanimous consent to submit for the record questions to these witnesses, asking them about various enforcement practices and efforts that they have made in this area, and I will ask unanimous consent to submit your responses for the record so that you won't necessarily have to go in detail over all of the things that you've said.

And I'll remind you—and without objection, these will be submitted for the record.

Also, without objection, your full written statements will be submitted for the record. And we would, therefore, ask you to summarize your testimony in 5 minutes or so, as we asked the first panel to do.

Again, there will be a yellow light that comes on at 4 minutes, and a red light that comes on at 5 minutes, so we would ask you to wrap up at that point, as expeditiously as you can.

Ms. Braunstein is recognized for 5 minutes.

STATEMENT OF SANDRA F. BRAUNSTEIN, DIRECTOR, DIVISION OF CONSUMER AND COMMUNITY AFFAIRS, BOARD OF GOVERNORS OF THE FEDERAL RESERVE BOARD

Ms. BRAUNSTEIN. Thank you.

Chairman Watt, Ranking Member Miller, and members of the subcommittee, I am pleased to appear before you to discuss the Board's efforts to promote fair lending.

It is widely known that there are racial and ethnic gaps in the availability and price of mortgage credit. In mortgage lending, these gaps have been highlighted by the Home Mortgage Disclosure Act, or HMDA data, including pricing data required by the Board's regulation.

Like racial and ethnic disparities in income, education, employment, and health care, gaps and access to credit have long presented our society with moral, legal, social, and economic challenges.

The Federal Reserve shares concerns that credit gaps may result in part from illegal discrimination, and we vigorously enforce compliance with fair lending laws.

The Board has a long-standing commitment to ensuring that every bank it supervises complies fully with the fair lending laws.

We have made consumer compliance supervision, including fair lending, a distinct function in the Reserve banks and at the Board, including specialist examiners and a separate report of examination.

When conducting fair lending examinations, our consumer compliance examiners perform two distinct functions.

First: Examiners evaluate the bank's overall Fair Lending Compliance Program to ensure that management is committed to fair lending and has put in place the appropriate systems, policies, and staff to prevent violations.

Second: Examiners determine if the bank has violated the fair lending laws. If we have reason to believe that there is a pattern or practice of discrimination under the Equal Opportunity Act, the Board, like other Federal banking agencies, has a statutory responsibility under the Act to refer the matter to the Department of Justice, or DoJ, which reviews the referral and decides if further investigation is warranted.

A DoJ investigation may result in a public civil enforcement action or settlement. The DoJ may decide, instead, to return the matter to the Federal Reserve for administrative enforcement. When this occurs, we ensure that the institution corrects the problems and makes amends to the victims.

We take our responsibility to refer matters to the DoJ seriously. In the first 6 months of this year alone, we referred five institutions after concluding that we had reason to believe they engaged in a pattern or practice of discrimination.

Two of those referrals involved ethnic and racial discrimination in mortgage pricing by nationwide lenders. One referral involved racial discrimination in the pricing of automobile loans. One referral involved discrimination against unmarried people. And one referral involved an institution with two loan policies prohibiting lending on Native American lands, and the other policy restricted lending on row houses, which resulted in discrimination against African-Americans.

Last year we referred four institutions to the DoJ for issues, including pricing discrimination in auto lending, mortgage red-lining, and age discrimination. We referred an additional five matters in 2004 and 2005.

The Federal Reserve conducted targeted reviews of institutions for pricing discrimination when the HMDA pricing data first became available in 2005.

As a result of these reviews, as I previously mentioned, we referred nationwide lenders to the DoJ for mortgage pricing discrimination.

Additionally, these reviews have reinforced several important aspects of fair lending supervision and enforcement.

First: HMDA data are most helpful as a fair lending tool when they are used in conjunction with other risk factors and supervisory information to identify institutions that warrant closer review. In particular, our referrals have confirmed that pricing discretion and incentives to charge more remain significant fair lending risks.

Second: To be accurate, our reviews need to be based on an institution's specific pricing policies and product offerings.

Third: It is important to test separately for discrimination in different geographic markets. A lender may have relatively small, unexplained pricing disparities across the Nation as a whole but still discriminate in some distinct geographic markets, such as individual MSAs.

The Federal Reserve is committed to addressing racial and ethnic gaps in availability and affordability of credit. With our supervisory and enforcement authority, we ensure that the banks we supervise comply fully with the fair lending laws and take strong action in the rare cases when they do not.

We are pleased to have this opportunity to work with you to ensure the consumer credit markets are free from illegal discrimination.

[The prepared statement of Ms. Braunstein can be found on page 76 of the appendix.]

Chairman WATT. Thank you, Ms. Braunstein, for your testimony.

Ms. Thompson is recognized for 5 minutes.

STATEMENT OF SANDRA L. THOMPSON, DIRECTOR, DIVISION OF SUPERVISION AND CONSUMER PROTECTION, FEDERAL DEPOSIT INSURANCE CORPORATION

Ms. THOMPSON. Chairman Watt, Congressman Miller, and members of the subcommittee, I'm the Director of Supervision and Consumer Protection for the FDIC. In this role, I oversee the Agency's bank supervision activities, which include both safety and soundness and compliance with consumer protection and fair lending laws.

I appreciate the opportunity to testify today on behalf of the FDIC to discuss enforcement of fair lending laws and our use of Home Mortgage Disclosure Act data to uncover illegal discrimination.

The FDIC does not tolerate credit discrimination in the banks we supervise. We examine institutions for their compliance with fair lending laws regardless of whether they report pricing data under HMDA, and fair lending exams are conducted in conjunction with each scheduled compliance examination.

HMDA data is an important component of fair lending examinations and provides examiners with valuable information about a bank's mortgage loan products and its lending practices.

Even if a bank is not required to report HMDA data, all banks must retain the information mandated under HMDA. This is particularly significant for the FDIC because many of the banks we supervise are small banks, and they are not subject to HMDA reporting requirements, either because their assets are below the thresholds for HMDA filing or the banks are located in a rural area.

Slightly more than half of the banks supervised by the FDIC are HMDA data reporters. However, while the other half of our banks are not required to report HMDA data, they still undergo a fair lending examination where FDIC examiners carefully review HMDA data to look for evidence of discriminatory lending.

In addition to providing important information for fair lending exams, the HMDA pricing data is useful for targeting disparities that require further review.

When the HMDA data indicates the possibility of discriminatory pricing, the FDIC focuses special attention on the institution. Examiners review individual loan files and they conduct additional statistical analysis.

Examiners also consider the presence of employee or broker discretion and pricing decisions and the relationship, if any, between loan pricing and compensation of loan officers or brokers.

When we discover fair lending violations, in all cases, the FDIC requires the banks to take immediate corrective action. The corrective action may vary in each case, but the goal is to ensure that the practice is stopped and that any victims are identified and receive appropriate remedies.

In addition, since 2004, the FDIC has taken 53 enforcement actions. Let me emphasize that the FDIC can and does require the bank to take corrective action even before a case is referred to the Department of Justice.

The FDIC is currently reviewing all cases involving possible discriminatory practices that have been referred to the Department of Justice for appropriate enforcement action. We intend to pursue these cases aggressively and to move forward in a timely manner.

In conclusion, the FDIC takes very seriously our responsibility to protect consumers and enforce the fair lending laws.

We will continue to work to assess our supervisory practices in order to identify fair lending violations and maximize the value of the HMDA data.

Thank you for the opportunity to testify, and I look forward to answering any questions.

[The prepared statement of Ms. Thompson can be found on page 279 of the appendix.]

Chairman WATT. Thank you, Ms. Thompson, for your testimony. I will now recognize Ms. Yakimov for 5 minutes.

Ms. YAKIMOV. Thank you.

STATEMENT OF MONTRICE GODARD YAKIMOV, MANAGING DIRECTOR, COMPLIANCE AND CONSUMER PROTECTION, OFFICE OF THRIFT SUPERVISION

Ms. YAKIMOV. Good afternoon, Chairman Watt, Ranking Member Miller, and members of the subcommittee.

Thank you for the opportunity to discuss the Office of Thrift Supervision's fair lending program.

Three pillars form the basis of our approach to fair lending compliance and enforcement. A rigorous and regular exam program, ongoing initiatives to ensure appropriate resources and attention are devoted to fair lending compliance and enforcement, and setting forth clear supervisory expectations relating to compliance with fair lending laws and all consumer protection statutes for the institutions we regulate.

OTS examiners conduct a fair lending assessment during each comprehensive safety and soundness and compliance exam, which occur every 12 to 18 months, depending on the institution's asset size.

In addition, our examiners conduct targeted fair lending reviews when an evaluation of an institution's HMDA data, or other factors suggest potential fair lending concerns.

OTS utilizes interagency exam procedures, which require all examiners to evaluate savings associations for various indications of discrimination, including potential discrimination in pricing, underwriting, steering, and red-lining.

Because the HMDA data include valuable information, but not all the factors needed to determine fair lending compliance, OTS examiners consider additional information about a lender's practices before reaching conclusions.

Institutions identified as requiring additional analysis due to the HMDA data, or other issues, are asked to provide supplemental information, such as credit scores, debt-to-income ratios, loan-to-value ratios, the extent of discretionary pricing, and related factors.

If unlawful discrimination is found, the institution is referred to the Department of Justice or HUD in accordance with Federal fair lending laws. Depending on the outcome of the referral and the nature of the violation, OTS also takes action to resolve the matter fully.

For example, as a result of routine and targeted fair lending reviews at institutions whose 2004 and 2005 HMDA data revealed potential fair lending concerns, OTS directed several institutions to take steps to strengthen their fair lending compliance program, including expanding fair lending training to employees, enhancing monitoring systems for brokers and correspondence, and implementing more detailed underwriting standards to better ensure compliance with fair lending laws.

In addition to these steps, OTS has also undertaken 10 enforcement actions, including the Equal Credit Opportunity Act, and 9 actions involving HMDA since January 1, 2004. These cases have resulted in three cease and desist orders and civil money penalties, totalling approximately $118,000.

Pillar two of our fair lending program involves an ongoing evaluation of the resources we allocate to this critical area. As of June 30th, OTS employed 556 examiners, specialists, and managers. Our examiners and managers are cross-trained in both safety and soundness and consumer compliance.

However, our cadre of examiners and managers includes a team of 65 specialists with advanced knowledge and expertise in fair lending laws and regulations.

In 2006, we hired 80 new examiners, and we're in the process of hiring an additional 40 more.

We have also created five new complaint examination specialist positions, one in each of our regional offices, again, to buttress our resources in this critical area.

The third pillar I will discuss and close with involves the commitment of OTS to ensure that the entities that we regulate understand our supervisory expectations, relating to the laws and regulations that broadly apply to them, and that we consistently apply these standards to all segments of the industry we regulate.

Consistent with this commitment to provide clarity, OTS is developing an advance notice of proposed rulemaking that will seek comment on various issues involving unfair or deceptive acts and practices, including various approaches and models OTS could use in connection with such a rulemaking.

Our goal is to solicit public comment on whether and how the OTS should expand its current prohibitions involving unfair acts or practices, and to provide greater clarity regarding how we will make UDAP determinations going forward.

I will close by reiterating that OTS is committed to fair lending examination and enforcement. It is the core of our mission.

I appreciate the opportunity to join you today to describe OTS initiatives in this critical area.

[The prepared statement of Ms. Yakimov can be found on page 301 of the appendix.]

Chairman WATT. Thank you so much for your testimony.

Mr. Marquis is recognized for 5 minutes.

STATEMENT OF DAVID M. MARQUIS, DIRECTOR, OFFICE OF EXAMINATION AND INSURANCE, NATIONAL CREDIT UNION ADMINISTRATION

Mr. MARQUIS. Thank you for this opportunity to testify today regarding NCUA oversight of consumer laws pertaining to mortgage lending and housing. I am the director of examination and insurance, and I'm responsible for the exam program at NCUA.

This is a timely and important subject that merits congressional oversight. I commend you for your interest in rules available to help consumers with what is arguably the most important purchase they'll ever make—their home.

NCUA places a priority on ensuring credit unions comply with all non-discrimination laws and works to protect consumers against discrimination of unfair home mortgage lending practices.

NCUA enforces fair lending laws through a comprehensive examination process and HMDA data. Approximately 2,300 credit unions filed HMDA data in 2005. Combined with a careful review of member complaints, NCUA is able to evaluate each credit union's compliance with the law in gaining a more complete picture of how a credit union makes mortgage loans.

As of 2006, just over 5,600 insured credit unions—federally insured credit unions—made mortgage loans comprising approximately 2 percent of the mortgage market.

With those credit unions subject to HMDA, NCUA works closely with the credit unions to ensure timely filings. NCUA issues regulate alerts periodically on this and other consumer protection compliance issues.

With regard to timely HMDA filings, NCUA noted disappointing trends and began assessing civil money penalties against late filers; 17 penalties were assessed in 2005 and 22 in 2006.

NCUA adopted the fair lending exam procedures developed jointly by the FFIEC in 2000. These rigorous new standards enabled NCUA to more effectively allocate resources devoted to oversight of fair lending practices.

NCUA also evaluates fair lending compliance as part of its risk-focus examination. Compliance is one of 7 risk areas considered by our 45 examiners during this overall assessment of an institution's safety and soundness.

If a violation is noted, it is documented in the Agency's compliance data base, and the examiner communicates corrective action to be taken.

Separate from the normal examination, NCUA has 25 examiners devoted to fair lending compliance.

NCUA selects credit unions for failing the examination based on factors such as the HMDA data, member complaints, and the complexity of lending programs offered by Freddie Mac. Freddie Mac union members have several avenues through which to facilitate the handling of consumer complaints about possible discrimination and home mortgage lending.

NCUA maintains a 1–800 consumer helpline and an Internet site, but, in addition to receiving complaints by mail, which continues to provide the greatest amount of consumer input in this area.

NCUA encourages the resolution of consumer complaints at the credit union level first. NCUA initially directs the credit union to investigate the complaint, inform NCUA of the results of the investigation, and resolve the matter according to applicable laws and regulations.

The Federal Credit Union Act requires each Federal credit union to have a supervisory committee, which ensures independent oversight of the credit union's board of directors and advocates the best interest of its members. All supervisory committee members are volunteers, and they are the first responders in investigating member complaints.

It is important to know, however, that NCUA reviews supervisory committee recommendations and actions, and follows up with the complainant to ensure that the matter is properly resolved.

Corrective actions can include letters of understanding and agreement, which reflect a credit union's CAMO rating, to cease and desist and civil money penalties.

Our experience is that the overwhelming majority of member complaints stem from poor communication between the credit union and the member or misunderstanding of the credit union's lending policies.

As a result, virtually all complaints are resolved after the NCUA directs the credit union to address the complaint with the member.

NCUA continues to refine this method in overseeing industry compliance with Federal lending laws. Examiner training has become more sophisticated and has resulted in a better understanding of lending activity in specific geographic areas, as well as a heightened awareness about how to detect discrimination.

In addition, NCUA constantly urges the credit union industry to promote financial education to credit union members and participate in industry compliance seminars and training in order to be more proactive in helping credit unions institute adequate compliance programs and oversight procedures.

Credit union members are entitled to fair treatment, not just because the law says so, but because they are, in fact, the owners of these institutions.

When their treatment is not fair and within the law, NCUA is there to step in and make certain that no member is subject to discrimination in any form or fashion.

Thank you for listening, and I'll be glad to answer questions later.

[The prepared statement of Mr. Marquis can be found on page 202 of the appendix.]

Chairman WATT. Thank you for your testimony.

Mr. Hagins, of the Office of the Comptroller of the Currency, is recognized for 5 minutes.

STATEMENT OF CALVIN R. HAGINS, DIRECTOR FOR COMPLIANCE POLICY, OFFICE OF THE COMPTROLLER OF THE CURRENCY

Mr. HAGINS. Thank you. Chairman Watt, Ranking Member Miller, and members of the subcommittee, I'm Calvin Hagins, the Director for Compliance Policy at the OCC.

I'm pleased to be here with you to discuss the OCC's commitment to ensuring compliance with fair lending laws.

Let me begin by saying there is no room in the national banking system for illegal discrimination. I've been a national bank examiner for over 20 years, and I've participated in dozens of exams of fair lending during that time.

I can assure you that the OCC is looking hard at fair lending and has not hesitated to take action when we've found evidence of illegal discrimination. The OCC has developed a supervisory approach that drills down into those institutions, markets, and loan products that appear at greatest risk for discriminatory practices.

We rely heavily on the HMDA data to help us target our supervisory activities, but we also make use of consumer complaints, academic and community organization studies, and census bureau data for risk-screening purposes.

We conduct targeted fair lending examinations to determine whether different outcomes and lending decisions are the result of unlawful discrimination. If we find that they are, we take appropriate steps to address the problem.

Since 1993, we've made dozens of referrals of matters involving discrimination to the Department of Justice or HUD. These actions have resulted in several highly-publicized multi-million dollar settlements for consumers.

Since then, the number of referrals by the OCC has dropped. Referrals alone can be misleading, however. Our fair lending supervision involves a four-pronged approach:

First, we have a fair lending and risk assessment and screening process to identify banks that exhibit higher fair lending risks;

Second, we conduct fair lending examinations of those banks, including statistical analysis;

Third, we seek corrective action to address deficiencies; and

Fourth, when necessary, we take enforcement actions to address violations of law.

Formal enforcement actions involving referrals generally should be necessary only if preventive measures have failed to ensure compliance with the fair lending laws.

We believe that's why the fair lending exams have been conducted—we believe that's why the fair lending exams we've conducted to follow up on disparities shown in the HMDA data have found that disparities were the result of legitimate, non-discriminatory credit factors, such as an applicant's credit score or debt-to-income ratio.

I also believe the national banks got the message that compliance with fair lending laws would be carefully scrutinized and many adopt the systems and controls to improve their fair lending compliance, because they knew we would be looking.

Regular and rigorous oversight by the OCC may also explain why national banks are not major players in the market for high-cost mortgages, just as it explains why they are relatively small players in the market for subprime lending.

Nevertheless, we remain committed to fully investigating price and disparities for unlawful discrimination, and we will continue to refine our fair lending strategies and techniques.

The OCC is working with the other banking agencies, and on our own, to improve our supervisory capabilities. We routinely coordinate and share information so that we can learn from each other.

We recently initiated a review through the FFIEC to evaluate whether the interagency fair lending procedures needed to be refined to better deal with pricing disparities.

And to address two risk areas that are an increasing concern, the OCC will also conduct intensified reviews of bank controls over brokers and reviews of practices that might involve discriminatory steering.

We will continue to review and enhance our fair lending supervisory processes, to ensure that the institutions we supervise do not engage in unlawful discrimination.

I look forward to answering your questions.

[The prepared statement of Mr. Hagins can be found on page 87 of the appendix.]

Chairman WATT. Thank you for your testimony, Mr. Hagins.

Ms. Becker, of the U.S. Department of Justice, is recognized for 5 minutes.

STATEMENT OF GRACE CHUNG BECKER, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Ms. BECKER. Thank you. Good afternoon, Mr. Chairman, Ranking Member Miller, and members of the subcommittee.

All Americans have the right to purchase homes and automobiles, and to borrow money for their businesses or their own personal consumer purchases, free of illegal discrimination.

Lending discrimination is especially pernicious because these financial transactions are so critical to the American dream—the ability to purchase a home, to start a new business, or to pay for your children's education.

While the Department of Justice recognizes that lenders may legitimately consider a range of factors in determining whether to make a loan to an applicant, illegal discrimination has no place in this determination.

The Civil Rights Division's Fair Lending Enforcement focuses primarily on two statutes: The Fair Housing Act and the Equal Credit Opportunity Act.

During this Administration, over 70 percent of the Division's fair lending cases have involved race and national origin discrimination, primarily on behalf of African-American and Hispanic-American communities. The consent decrees that we have secured on behalf of minority victims have included monetary relief of over $25 million.

We've also recently brought cases involving discrimination on the basis of marital status and filed the first ever sexual harassment case under the Equal Credit Opportunity Act.

Redlining—when lenders illegally refuse to do business in minority communities—constitutes over half of our fair lending enforcement in this Administration and relies heavily upon HMDA data.

The Division's redlining cases complement the predatory lending enforcement conducted by the other Federal agencies represented here today.

When communities are abandoned by prime lenders through redlining, those communities become targets for less scrupulous lenders who may prey on minority communities using abusive products or loans.

As one measured predatory practices, the Division includes consumer education as a component of our consent decrees, which helps to reduce the likelihood that individuals in these communities will become victims of predatory lending.

For example, the Justice Department initiated a redlining investigation that culminated in a settlement with Centier Bank in Indiana. Under the settlement, Centier will open new offices and expand existing operations in previously excluded areas.

The bank will also invest $3.5 million in a special financing program and spend at least $875,000 for consumer financial education, outreach to potential customers, and promotion of its products and services in these previously-excluded areas.

The Division has also utilized HMDA data extensively in other fair lending enforcement efforts. The recent expansion of HMDA reporting to include pricing data has been a welcome additional source of information for identifying potential fair lending violations.

We analyzed the HMDA pricing data as a starting point to identify disparities in the pricing of loans, primarily focusing on race or national origin.

According to the 2004 data, there were 200 lenders that were identified as having statistically significant disparities that could not be explained by the reported HMDA data.

The 2005 data identified 270 lenders. Now, there's some overlap there. There was a reference on the first plan to 470 referrals. I just want to clarify the 400—I think the witness was referring to the 470 lenders, adding those 2 lenders together, not taking into account the overlap but just to make clear that the Justice Department hasn't received 470 referrals.

The first pricing referrals that we've received came over the last several months.

We've received three referrals from the FDIC and two referrals from the Federal Reserve Board, stemming from the HMDA pricing data. But the Justice Department did not wait for referrals. When the Fed's report came out in the fall of 2005, the Justice Department, on its own initiative, initiated a number of investigations based upon this HMDA data.

And, although I cannot discuss the details of ongoing investigations, I can report that we've completed and closed two mortgage lending pricing investigations and that others are ongoing and moving to a determination as to whether to file a lawsuit.

We expect to initiate additional investigations in the coming months as well.

These fair lending investigations require a substantial investment of time and resources. We generally obtain and analyze detailed additional information that is not available through HMDA, such as the borrower's credit score, loan-to-value ratio, and debt-to-income ratio.

Analyzing this detailed loan data, as well as information about the lender's business policies and practices, enables us to assess whether those factors or possible discrimination may explain the pricing differences identified in HMDA data.

The Division also works hard to coordinate fair lending enforcement with the other agencies here today. We have an interagency fair lending task force that we participate in, and we share the committee's goal of utilizing all available information, including HMDA pricing data, to identify and stop lending discrimination.

We're working hard to achieve that goal, and we welcome the committee's support. Thank you very much.

[The prepared statement of Ms. Becker can be found on page 66 of the appendix.]

Chairman WATT. Thank you, Ms. Becker, for your testimony.

And we now recognize Ms. Kendrick, of the Office of Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, for 5 minutes.

STATEMENT OF KIM KENDRICK, ASSISTANT SECRETARY, OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Ms. KENDRICK. Thank you. Chairman Watt, Ranking Member Miller, and members of the subcommittee, good afternoon.

I am Kim Kendrick, Assistant Secretary for the Office of Fair Housing and Equal Opportunity, at the U.S. Department of Housing and Urban Development. On behalf of Secretary Alfonso Jackson, thank you for the opportunity to testify before you today.

In 2004, the Federal Reserve Board, for the first time, began collecting pricing information as a part of its collection of Home Mortgage Disclosure Act data.

In September 2005, the Federal Reserve Board released its first report analyzing this data. This report allowed us to see the extent of the pricing disparities between whites and African-Americans and Hispanics. In addition, the report data showed that minority borrowers were much more likely to receive a high-cost loan than white borrowers.

Along with the report, the Federal Reserve Board provided HUD, the Federal Trade Commission, and the Department of Justice with a list of independent lending institutions whose HMDA data showed significant pricing and denial disparities between African-Americans and Hispanics and whites.

At your request, I am here today to discuss the fair lending enforcement activities HUD has undertaken since the release of this data.

After receiving the Federal Reserve Board's list in September 2005, HUD assembled a task force of investigators, enconomists, and attorneys to review the list and to develop a methodology for selecting targets for enforcement.

In addition to the data supplied by the Federal Reserve Board, we reviewed fair lending complaints, consumer complaints, and other HMDA data available in each of these lenders.

Given the findings of the Federal Reserve Board, we chose to focus our review on lenders with significant disparities in the pricing of loans to minorities and white borrowers and select the lender that we thought most likely to show evidence of discrimination.

So on April 14th, 2006, I authorized HUD's first Secretary-initiated investigation resulting from the HMDA data.

Since that time, the Department has reviewed and analyzed the lender's policies, manuals, guidelines, defenses, and loan level data for multiple fiscal years.

We have also hired an outside contractor with decades of experience to assist us in this complex analysis.

In September 2006, the Federal Reserve Board released the 2005 HMDA data and, again, provided HUD with a list of independent lenders based on that data.

HUD, again, carefully analyzed the HMDA data, along with the fair housing complaints information, and targeted two additional lenders for Secretary-initiated investigations, based on pricing disparities.

HUD is still investigating all of these Secretary-initiated actions.

Although I cannot reveal the targets of our open investigations, I can say that we are looking at medium-sized lenders whose loan applications range from sizes 2,500 to 150,000 per year.

Also, I can tell you that two of three targets are FHA-lenders and that the data for each of these reveal significant pricing disparities.

The Department is currently reviewing the 2006 data to identify additional lenders with pricing disparities based on race, national origin, or sex.

In addition to these HMDA Secretary-initiated investigations, the Department and the State and local partners in the Fair Housing Assistance Program complete an average of 425 additional lending investigations each year.

These are cases filed by individuals alleging that the lender refused to provide them with loans or provided them with different loan terms or conditions on prohibitive basis.

HUD and our State and local partners investigate each of these cases as required by the Fair Housing Act.

Generally, we reach a determination on the merits of about 55 percent of these cases, that alleged lending discrimination, and reach a conciliation in about 28 percent of such investigations.

Home ownership is a cornerstone of the American dream. It takes most Americans many years to save up for a down payment and otherwise prepare ourselves for home ownership.

HUD wants to be sure that race or national origin is never a barrier to obtaining a loan or becoming a homeowner. We will continue to investigate cases, continue to obtain meaningful relief for individuals, and to pursue systemic cases of discrimination, until we are confident that all lenders are providing all consumers with the loans that they deserve.

Thank you for your time and your attention.

[The prepared statement of Ms. Kendrick can be found on page 138 of the appendix.]

Chairman WATT. Thank you for your testimony.

And I now recognize Ms. Parnes, from the Federal Trade Commission, for 5 minutes.

STATEMENT OF LYDIA B. PARNES, DIRECTOR, BUREAU OF CONSUMER PROTECTION, FEDERAL TRADE COMMISSION

Ms. PARNES. Thank you. Chairman Watt, Ranking Member Miller, and members of the subcommittee, I am Lydia Parnes, Director of the Bureau of Consumer Protection at the Federal Trade Commission.

I appreciate the opportunity to appear before you today to discuss the Commission's efforts to combat unfair, deceptive, and other illegal practices in the mortgage lending industry, including its fair lending enforcement program.

As part of its mandate to protect consumers, the Commission has wide-ranging responsibilities regarding consumer financial issues. The Commission enforces a number of laws, specifically governing lending practices, including the Equal Credit Opportunity Act.

The Commission also enforces Section 5 of the FTC Act, which broadly prohibits unfair or deceptive acts or practices in or affecting commerce.

The FTC enforces these laws with respect to non-bank financial companies, including non-bank mortgage companies, mortgage brokers, finance companies, and units of bank-holding companies.

The Commission engages in law enforcement investigations as opposed to regular examinations of the entities under its jurisdiction.

I'm pleased to appear on this panel with representatives from agencies with whom the Commission works closely in the fair lending area. Through both formal and informal collaboration, we share information on lending discrimination, and predatory lending enforcement, and policy issues.

Most recently, the FTC joined with the Federal Reserve Board, the Office of Thrift Supervision, and State regulators in announcing a pilot project to focus on whether certain large subprime lenders are complying with key consumer protection laws, including ECOA.

The Commission's Fair Lending Enforcement Program is a mainstay of the Agency's consumer protection mission. The Commission has brought over two dozen ECOA cases against large mortgage lenders, major non-mortgage creditors, and smaller finance companies, alleging violations of both the substantive and procedural requirements of the ECOA.

With the explosion of subprime lending in the last decade, the Commission also has focused on deceptive representations by subprime lenders regarding the cost and other key terms of a mortgage loan.

Illegal practices in the subprime mortgage market, particularly affect lower income and minority consumers.

Since the late 1990's, the agency has brought 21 actions and returned over $320 million in redress to consumers, alleging deceptive or unfair practices against company in the lending industry with an emphasis on the subprime market.

I would like to mention two notable examples of Commission cases against subprime lenders that targeted minority and low-income borrowers.

In our lengthy litigation against Capital City Mortgage Corporation, a company that targeted African-American borrowers in the Washington, D.C. area, the Commission alleged that the defendants made deceptive claims at each stage of the loan process when making and servicing loans. This resulted in trumped-up fees and inflated monthly balances and pay-off amounts. Our complaint stated that these practices led to default and foreclosure in many instances.

In Mortgages Para Hispanos, the alleged conduct also was egregious. A bilingual mortgage lender misled Hispanic consumers about key loan terms during the sales pitch, conducting it almost entirely in Spanish, and then provided closing documents containing less favorable terms in English.

Currently, the Commission is engaged in several ongoing nonpublic fair lending investigations of mortgage lending companies. The Commission uses HMDA data as a tool to target companies for further investigation.

Because HMDA data alone are insufficient to establish law violations, the Commission staff engages in resource intensive, statistical analyses of additional information obtained through extensive document review and other evidentiary sources.

The Commission has a strong commitment to enforcing the fair lending laws and will pursue vigorously any violations revealed by its investigations.

The Commission also has an extensive program to educate consumers about financial literacy and subprime borrowing, including most recently a publication on how to avoid foreclosure.

The Commission will continue to take aggressive and concerted action to hold illegal practices in the marketplace, while mindful of the important benefits that increased access to credit bring consumers.

Again, I appreciate the opportunity to appear before the subcommittee and would be pleased to answer any questions you may have.

[The prepared statement of Ms. Parnes can be found on page 235 of the appendix.]

Chairman WATT. Thank you, Ms. Parnes.

Ms. PARNES. Parnes.

Chairman WATT. I mispronounced your name, and I apologize for that.

Ms. PARNES. That's quite all right.

Chairman WATT. I thank all of the witnesses for being here and for your testimony.

In recognition of the fact that I'm going to be here until the end of the hearing, and some of my colleagues may have other scheduling conflicts, I'm going to defer my questions until the last person. So I'll now yield 5 minutes to the gentleman from Massachusetts for questions.

Mr. LYNCH. Thank you for your courtesy, Mr. Chairman. And thank you for inviting this distinguished group.

I want to thank all the panelists as well for helping this committee with its work. I have a couple of questions. I'll ask Ms. Braunstein first, and then Ms. Parnes second.

We heard in the earlier panel, a distinguished group of, I would say, consumer advocates, describe trends that they see that are somewhat troublesome. And I know that the Federal Reserve is the primary analyst for HMDA data as set forth in the Federal Reserve Bulletin.

What, in fact, do you see? Is the data, let me say, the interpretation of the data that we heard from the consumer advocates earlier today are consistent with what you see?

Ms. BRAUNSTEIN. I really can't comment on the nature of their studies because I—you know, we would have to do an independent review.

Mr. LYNCH. Okay. How about just a straight question. What do you see?

Ms. BRAUNSTEIN. What we see is pretty much explained in the bulletin article. We find that the data is extremely useful as a screening tool. It gives us great insight as to where there needs to be more investigation into specific institutions.

But, also, the data—we believe that the data, in and of itself, does not determine whether or not there is a fair lending violation, that you need to have more factors involved, and—

Mr. LYNCH. Okay. That was my next question.

Ms. BRAUNSTEIN. Yes.

Mr. LYNCH. Do you think, as they suggested earlier today, that the fact—that HMDA should be expanded to include other factors? And what would those factors be if you would support an expansion?

Ms. BRAUNSTEIN. When we expand—we did expand HMDA data when we added the pricing data a few years back, and when we did that, we looked at other factors and found, for a variety of reasons, that they should not be added at that time.

We're constantly looking at our regulations and reviewing them, and I think, in order to expand the data, you have to look at certain things. You have to look at the benefits of the increased information, and you also have to look at the costs involved on the reporting institution because they're not insignificant, and the benefits need to justify the cost.

Also, I think it's important to note that no matter how many data fields we were to add to HMDA, the HMDA data will never be determinative of discrimination in and of itself.

There are things we look at in an institution in terms of how they manage their programs, and the kinds of due diligence they use. They could never be captured with data and are quite necessary in order to make findings of discrimination. So that's, you know, how we look at it at this point in time.

Mr. LYNCH. Okay. Thank you.

Ms. Parnes, I noticed on page 13 of your testimony it says that 65 to 70 percent of mortgages are going out through mortgage brokers who don't necessarily provide HMDA data.

First of all, can you describe the Fair Lending Enforcement Programs that you have at the FTC for these non-bank mortgage companies? And do you believe that brokers should also be required to report HMDA data?

Ms. PARNES. Certainly. The Commission's program, as I mentioned, it's a broad program. Of course, we look at both—we enforce both the Equal Credit Opportunity Act and, as I mentioned, Section 5 of the Federal Trade Commission Act.

When we're enforcing the ECOA, we get the HMDA data. We review the data that we receive from the Fed. We use that data to select targets for further investigation.

We do have several non-public investigations that are pending right now.

We use our full investigatory powers during those investigations. We obtain detailed information from our targets concerning their practices, their underwriting criteria, and we engage in a very rigorous statistical analysis, looking at all of their loan files to determine whether the disparities that helped us target these institutions kind of hold true once you consider all of these other factors.

Mr. LYNCH. What's the share of resources you dedicate to that versus the industry, you know, in terms of looking at compliance?

Ms. PARNES. Well, we've actually—about a year-and-a-half ago, 2 years ago, we considerably expanded the resources that we're devoting generally to this area.

We had a reorganization in the Bureau of Consumer Protection. We created a division that focuses exclusively on consumer financial issues. Right now, we have a task force of about 10 attorneys, economists, investigators, and so forth, working exclusively on the HMDA data cases. And we have other attorneys and economists working more generally in the lending area.

Mr. LYNCH. Okay. And just the last part of the question was do you support—

Chairman WATT. The gentleman's time is expired, but go ahead.

Mr. LYNCH. It was already asked. I asked so many questions, you probably forgot this last line, about whether or not the broker should be required to report HMDA data as well?

Ms. PARNES. Well, it's one of the things that we are looking at in this process, and we plan on making a series of recommendations to our colleagues about whether reporting should be expanding.

Mr. LYNCH. Fair enough. I yield back, Mr. Chairman. Thank you.

Chairman WATT. Thank you. And I recognize my distinguished ranking member for 5 minutes.

Mr. MILLER. Ms. Becker, you indicated in your testimony that DoJ has completed two fair lending investigations. And I know you can't get into the details, but how did the Department utilize the HMDA information in these cases to your benefit?

Ms. BECKER. The HMDA pricing information has been particularly valuable to the Department of Justice because it identifies specific lenders.

A lot of times we will read articles in the newspapers about industry trends or about what's happening in a particular region, but without identifying specific lenders, it's difficult for us to be able to go in and investigate these cases. So that has been extremely helpful to us.

What we have done is look at the HMDA pricing data as a starting point, and then we will contact the lender to get additional information. That information may include several non-HMDA factors to see whether or not the disparities may have been caused by legitimate reasons.

They've been mentioned here today, but I'll just mention them again. Credit score. It could be loan-to-value ratio or debt-to-income ratio.

We have in-house economists and statisticians who will run a variety of different analyses. And sometimes the lenders will provide additional data that will require us to re-analyze the data that we currently have.

And then, after that, we will make a determination whether statistically significant disparities are explainable for legitimate business reasons, or if there are no legitimate business reasons, then there is an inference that it may be discrimination.

Based on the totality of all of that evidence, we will then make a determination of whether or not there's sufficient evidence to believe that there is a pattern or practice of discrimination. Not an individual instance but a pattern of practice of discrimination going on in the institution. And where that's insufficient, then we close the case.

Mr. MILLER. Okay. Ms. Parnes, I know HMDA is only one component of the FTC's lending enforcement. Is that correct, as you stated earlier?

Ms. PARNES. Yes. Yes, it is.

Mr. MILLER. There's a broader range of activities that you pursue to combat illegal lending practices. Can you define what those might be?

Ms. PARNES. Well, as I mentioned, we look at lenders in the subprime market, generally. And it's an area that we think is an important one for the FTC to remain active.

Mr. MILLER. When you talked about subprime market, I have a question. Would there be a legitimate reason why a specific lender might open a subprime branch in a certain area and not in another?

Ms. PARNES. I don't know that lenders actually offer, you know, only subprime loans in specific branches. That's not necessarily the experience that we found. But, of course, we don't regulate—you know, our regulation doesn't extend to banks at all, the non-bank institutions.

Mr. MILLER. Okay. Ms. Kendrick, you indicated that the Department uses its subpoena powers to obtain additional loan information, to determine whether the differences in pricing are due to race, or can be explained by other factors. Is this additional information crucial to your determination?

Ms. KENDRICK. Yes. And I understand why you sat me between these two fine women, because we basically do the same thing.

The data we take a look at, we take a look at it initially from the HMDA data, but we have to take a look at the other information, the loan—

Mr. MILLER. A broader range of information, such as?

Ms. KENDRICK. Broader range of information because that's going to help us determine, because some of the factors, pricing disparity is just not enough to determine discrimination.

Mr. MILLER. What would that broader range of information be that you would look at?

Ms. KENDRICK. In addition to—

Mr. MILLER. HMDA.

Ms. KENDRICK. —we take a look at the loan-to-value ratio, the income. We take a look at the location of the property. We take a look at other factors, such as the credit background and credit scores of the individual, and so that all helps us determine whether or not discrimination is going on.

And we take a look—we do a kind of pair testing—kind of looking at people who are similarly situated to see if they are treated similarly.

Mr. MILLER. Do you think HMDA is a reasonable indicator that you can use to determine whether you want to pursue additional investigations or not?

Ms. KENDRICK. Yes. It's been an excellent tool for us.

Mr. MILLER. Okay. And, Ms. Parnes, how does the FTC protect minority consumers from deception and other legal practices? Do you have any tools that are used beyond that?

Ms. PARNES. Well, what we do—I mean, we do this, certainly as I mentioned, in the subprime market, we have—in the subprime lending market where we've brought a lot of cases and returned over $320 million back to consumers.

But we have a program that focuses on Hispanic consumers as well. We found a number of years ago that Hispanic consumers were subjected to fraud at a greater rate than non-Hispanic white consumers. And, because of the language barrier, we've made efforts to translate all of our consumer education material into Spanish, and to make special efforts in terms of law enforcement and outreach to the Hispanic community.

Mr. MILLER. Now, there are opportunities for individuals to shop for better loans. Is there anything you can see that we could do to help improve consumer shopping?

Ms. PARNES. Well, the Commission issued about a month ago, 2 months ago, a report on mortgage disclosure, and it was a report of our economics, and it recommended consideration of better disclosures in mortgage documents, and I certainly think that would be an area well worth paying attention to.

I think mortgage disclosure documents are very confusing for consumers, and clearing that up would be a great step.

Mr. MILLER. Thank you very much.

Chairman WATT. I thank the ranking member.

And I recognize the gentlewoman from New York for 5 minutes.

Ms. MCCARTHY. Thank you.

Listening to everybody's testimony, and I'm sitting here because I have eight regulators in front of me, and obviously we have seen an increase in problems over the last couple years that are actually hitting ahead kind of now, as far as discrimination.

Were there any warning signs out there that this was all coming to a head? Do you guys talk to each other? Do you share information on what you even just read in the paper? I mean, we read the papers, the Wall Street Journal, and you look to see that—we could see that things were boiling up. That was several months ago, and I know some have mentioned that a month ago they put a new thing in place. But this has been going on for a number of years now.

And I think it was last month we had another hearing here with Ms. Blair of the FDIC. She offered a brief outline of deceptive mortgage practices. She had a list.

And I guess the question to all of you is, should we have one authority to really look into all of this, where we have eight regulators in front of us, and each one of you I'm sure do a good job. But in the collective area, it doesn't seem we have gotten better. If anything, it's embarrassing, and I think our government has kind of failed our consumers out there that are being discriminated against because those numbers have gone up.

So I'm a little frustrated here on the testimony that I'm hearing today, and certainly the hearing—those that were here to listen to the testimony earlier.

I don't know what else to say. Any answers from anybody?

Ms. KENDRICK. Well, I'll take it. From the U.S. Department of Housing and Urban Development, this is an area we were looking at even last year, in the last session of Congress, when Secretary Jackson came before Congress and asked that we modernize the Federal Housing Administration program, because we recognized that some of these issues were, when they come to the forefront, and he thought that modernizing the Federal Housing Administration program would help stem, kind of, some of this tide, so that people could use a product that is safe and secure.

Ms. McCARTHY. Well, I understand that. And I'm not trying to put the blame here on anyone.

I'm just wondering that, you know, this has been going on for a number of years. Do we in government react too slowly in trying to correct a problem that obviously has been going on for a number of years?

I mean, these boutique mortgages probably started several years ago. We certainly knew, even a few years ago, that those mortgage brokers that are not licensed have been a big problem in different States. And, yet, we didn't react fast enough, and so we saw this problem bubbling up faster and faster until the point of where all the foreclosures started happening. And the first signs were about a year ago, because that's when we saw the market on housing start to go down.

So I'm saying all the warnings were there. I mean, you know, the newspapers were picking it up.

We're having a hearing in July, trying to figure out how we're going to make sure this doesn't happen again. And I think that's something that, you know, we all have to look at.

So, I mean, with—no one answered whether do you guys work together? Do you share information together?

Ms. THOMPSON. We do work together. The Federal banking agencies work together. We have the FFIEC, which is comprised of all the Federal banking agencies.

A couple of years ago we started to look at the increase in delinquencies in the mortgage market and we worked together to come up with non-traditional mortgage guidance to cover the interest-only products and some of the mortgage products with negative amortization.

We recently worked together to issue the subprime statement that covers some of the products that have payment shock.

We have also been working together to try to combat the foreclosure issue. We issued a joint statement to all of the institutions that we supervise so that they would be encouraged to work with borrowers to restructure some of these bad loans.

We do talk to one another.

Ms. McCARTHY. I guess that's the word. You "encourage." When there's a prosecution and, basically, you fine that particular institution for wrongdoing. I think you had said $800,000 was a fine, if I heard that correctly.

Is that enough bite to discourage other financial institutions from not doing wrong because they're making so much money? So, all right, so they throw out—say they pay a million dollars. How much have they actually made over doing bad practices?

Ms. THOMPSON. When we find a violation, even if we don't have a pattern or practice, and refer that violation to the Justice Department, we require our institutions to take corrective actions immediately. And if that violation is substantive and involves harm to consumers, we require the institution to find all consumers that have been harmed by that particular violation, and then implement restitution.

Ms. McCARTHY. To each and every one that has been violated?

Ms. THOMPSON. That's correct.

Ms. MCCARTHY. And do most of those that have been violated respond?

Ms. THOMPSON. Absolutely. There is huge reputational risk for the institution, so when we cite violations, they want to take immediate action to correct the problem. And that is notwithstanding whether or not we decide that there is a pattern or practice of fair lending violations.

Ms. MCCARTHY. Are they large numbers?

Ms. THOMPSON. Well, at the FDIC, since 2004, we have referred 115 findings of illegal discrimination under ECOA to the Justice Department.

We have cited 170 institutions for substantive ECOA or FHA violations since 2004. And for non-substantive violations, we have cited over 2,000 violations for ECOA and the Fair Housing Act. There were HMDA reporting violations as well, and we cited over 1,300 of those.

Ms. YAKIMOV. Could I add that the project that was mentioned earlier where the Federal Reserve, the OTS, looking at holding company subsidiaries, mortgage brokers to the FTC, and the State's authority, I think it's an important project, and it speaks to how we're working and communicating so that we're coming up with a common approach, areas where we're going to focus, including HMDA, ECOA, Truth in Lending, and we're going to share results.

Obviously, if we find issues, we'll deal with those under our respective jurisdiction, but this sharing, this collaboration, I think really connects the dots in a way that is important to root out any potential discrimination or broader violations of consumer protection statutes.

Ms. MCCARTHY. I know my time is up, but I guess food for thought is, why are we still having discrimination in the year 2007?

I guess that's the question that we need to answer.

Chairman WATT. Thank you.

And the gentleman from Texas, Mr. Green, is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. And thank you, members of the panel, for appearing today.

The question that I'm grappling with now is, how do we prove illegal covert discrimination based on what we've heard? Obviously, confession would be a great way to do it. However, the mendacious mentality of persons who perpetrate this kind of behavior usually does not lend itself to a confession.

Statistical information would be great, except that we always have someone who will conclude that statistical information is inconclusive, and perhaps you cannot even construct a means by which you can acquire the statistical information via the process that HMDA uses. And litigation, of course, is a means, but that can be quite costly.

So the question becomes, how do we acquire this empirical data to prove that illegal, unlawful discrimination exists?

Ms. Braunstein, I believe it is, how would you conclude that we can acquire the empirical information?

Ms. BRAUNSTEIN. Well, we do use statistical analysis, and we find it to be quite effective.

The HMDA data, alone, is not sufficient, but through our examination authority, we have the ability to gather additional information from financial institutions. And when we use this additional information, we have found that we are able to actually root out—

Mr. GREEN. Let me ask this, if I may.

You've heard talk of testing. I'm sure you're familiar with the process? True?

Ms. BRAUNSTEIN. Yes.

Mr. GREEN. Yes. Is testing a useful tool in acquiring empirical data?

Ms. BRAUNSTEIN. I think testing could be a useful tool.

Mr. GREEN. What about testing causes it to be less useful than some of the other methodologies?

Ms. BRAUNSTEIN. I think it depends on the financial institution and the situation. For one thing, if you're using testing in small institutions, oftentimes it's not as effective, and many of our institutions are quite small.

Whereas, if you start sending in pairs of people, as they do in testing, it's going to be quite obvious that something's going on, because they don't get that kind of volume in institutions.

Mr. GREEN. I understand.

Ms. BRAUNSTEIN. Yes.

Mr. GREEN. Well, assuming for a moment that we can have covert testers to reveal covert discrimination, that's what we're going after, if we can get them in, and it's not known that they're testers, is this an efficacious means by which we can uncover unlawful discrimination?

Ms. BRAUNSTEIN. We would have to take a closer look at it and see how the program was structured.

Mr. GREEN. Assuming that it is structured such that you have testers who are equally qualified and one receives positive response and the other a negative, that would not be helpful?

Ms. BRAUNSTEIN. It could be. Yes.

Mr. GREEN. Would you think that testing would be another means by which we could acquire the empirical data necessary to prove that unlawful discrimination exists?

Ms. BRAUNSTEIN. As I say, it could be.

Mr. GREEN. Could be. But you're not really sure?

Ms. BRAUNSTEIN. At this point, no.

Mr. GREEN. I see. Is there anyone on the panel who thinks that testing is a lawful and useful means of proving that invidious and unlawful discrimination exists? If so, would you kindly raise your hand?

Okay. One, two. If you don't raise your hand, I'll have a few questions for you.

[Laughter]

Mr. GREEN. Okay. It looks like we have everybody but the gentleman who didn't raise his hand. I can't see your name.

All right, sir. You have some concern about testing?

Mr. MARQUIS. Well, I don't have a concern about it. I think maybe it could be useful, but I guess you'd have to be careful in terms of filling out false applications, letting someone who is actually really filling out false applications, and then said, "Oh, I was just a tester." I guess you'd have to understand ahead of time who those testers would be.

Mr. GREEN. All right. Let's assume that—

Mr. MARQUIS. If they're not—in other words—

Mr. GREEN. Let's assume that we add that to the equation. We do that. Now can testing become the useful tool?

Mr. MARQUIS. Maybe it could be. Yes.

Mr. GREEN. Would you think that it would be appropriate to use testing in financial institutions to ascertain whether or not—well, before I go there. Quickly.

Would testing act as a deterrent if we publish the fact that testing is taking place? Do you think it would be a deterrent? If you think so, would you kindly raise your hand? Do you think it would be a deterrent?

Okay. If you did not raise your hand, then raise your hand now.

Okay. Everybody thinks testing would be a deterrent.

So, Mr. Chairman, if I'm over time, I will yield back at this point.

Chairman WATT. The gentleman observes the red light.

Mr. GREEN. Yes, sir.

Chairman WATT. Which is an indication that the gentleman's time has expired. Although if he wishes an additional 30 seconds, he may have it.

Mr. GREEN. I would welcome 30 seconds, Mr. Chairman.

With reference to the testing, as you know, the Federal laws currently are an obstacle to this type of testing. Would you think that it would be appropriate for us to make an exception so that we can eliminate this kind of unlawful discrimination?

I think that in 2007 we ought to be at a point in the history of our country where we want to end unlawful discrimination. We ought to have the will to do it. Would that help us if we, in Congress, worked on these laws so that we could test and find out who the culprits are?

And I will yield back, and ask that, if you would, just raise your hand if you think it'll help. Anybody think it'll help us to do this? Congress?

Okay. If you didn't raise your hand, then raise your hand now. Anybody?

Yes. You don't think it would help, ma'am?

Ms. BRAUNSTEIN. No, I lost the question. I didn't hear the entire question.

Mr. GREEN. Well, I understand. I will forego any additional questions.

Thank you, Mr. Chairman. You have been very generous.

Chairman WATT. Thank you for your questions.

I'll recognize myself for 5 minutes, but will generally say that I have so many questions, really, that the bulk of them will have to be covered in written form, which we will do in follow-up to the hearing.

I do hear what the gentleman is saying. There is a Federal statute that makes if unlawful to knowingly and willfully falsify a credit application or applications of this kind, which is a deterrent to testing, and we may need to take a look at that.

I am surprised to hear that HUD is engaged in paired testing. Ms. Kendrick, that's the first time I've heard that. Are you sure that HUD is engaged in paired testing somewhere?

Ms. KENDRICK. It's paired analysis of the data, by taking a look at equally qualified persons and pairing them together to make an assessment about whether or not—

Chairman WATT. Okay. So that's different than paired testing that was testified about earlier, when you send out testers—

Ms. KENDRICK. Oh, no. This is paired analysis testing.

Chairman WATT. Okay. I'm glad I clarified that because you said paired testing, and I didn't think HUD was engaging in that practice.

Ms. Braunstein, the Fed has defined these parameters for reporting under HMDA. Would it require congressional action to expand the information collected—

Ms. BRAUNSTEIN. No. We—

Chairman WATT. —or does the Fed have the authority to expand?

Ms. BRAUNSTEIN. We have the authority, as we did with the pricing data, to add additional fields.

Chairman WATT. Within what parameters?

Ms. BRAUNSTEIN. I am not aware of parameters. I mean, obviously, as I mentioned before, we do cost benefit analysis of adding additional fields because there is, you know, cost involved.

Chairman WATT. So if we wanted additional parameters added, Congress, after jaw-boning you all, as we've done in some other areas—

Ms. BRAUNSTEIN. Well, certainly, I mean, Congress—HMDA was created by Congress—

Chairman WATT. I understand. We could do it ourselves or we could—

Ms. BRAUNSTEIN. Right.

Chairman WATT. —more aggressively encourage you to do it.

The troubling thing is, I mean, the fields that you are—the parameters over which you are testing get generally to subprime lending, high-cost lending.

My concern is that these same patterns probably are out there in non-high-cost loans. Is there any way that you have to determine whether that is the case also?

Ms. BRAUNSTEIN. Yes. During our fair lending reviews of the institutions we supervise, we look at pricing across all loan products not just the high-cost mortgages.

Chairman WATT. I understand that. I guess the question I'm asking is, can we be assured that this same pattern that exists, or appears to exist, of discriminatory pricing, in high-cost loans, doesn't also exist if we were running the numbers in all loans?

Ms. BRAUNSTEIN. We can only speak to the institutions that we supervise, not across the whole industry.

Chairman WATT. But could you even give me that assurance for the institutions that you supervise?

Ms. BRAUNSTEIN. Yes, I think I could, because we do very rigorous—

Chairman WATT. You're saying I would see a—

Ms. BRAUNSTEIN. —and if we had—

Chairman WATT. —different pattern in non-high-cost loans than I would see in high-cost loans?

Ms. BRAUNSTEIN. There is a difference between seeing a pattern in the HMDA data and finding actual cases of discrimination, of fair lending violations, as we know.

We have the HMDA data which flagged a certain number of institutions for closer looks, but not every one of those institutions was actually violating fair lending laws when we looked further.

So I would expect that it would be the same kind of thing with the non-high cost loans, as we may see institutions that wanted further attention. And if we found evidence of discrimination, we would take appropriate action.

Chairman WATT. Let me put you all on the spot just a little bit, because over and over I've heard privately, off the record, that "a problem" in this area is that you all regulators make referrals to the Department of Justice. The Department of Justice just simply kicks them back for you all to do something. The Department of Justice is really not aggressively—now I know your colleague from the Department of Justice is here, but we need to get to the bottom of this.

We all know—I don't think there's anybody on this panel who doesn't know that there's some discrimination going on, whether you—we've accepted the fact that HMDA doesn't prove discrimination. I'm not suggesting that. But there's not a single person in the lending community, the borrowing community, or the regulator community, that doesn't know that there's still differentials based on race.

And it doesn't stop when you get to the higher-income African-Americans. In fact, some suggestion is that it gets worse as you go up the income ladder.

So I'm trying to figure out what we can do, effectively, to stop this. I mean, it is just—it is inexcusable for people with identical credit records, identical everything, except their races, and one gets a loan that's a quarter point higher or 10 basis points, or 15 basis points.

Mr. LaCour-Little eliminated everything down to 10 or 15 basis points but still, even that, is unacceptable.

So how do we get to the bottom of this? I guess that's where I'm trying—that's the frustration that everybody is feeling here.

Anybody have any suggestions? And I'll make that my last question. I know the ranking member—but that's the bottom line of where we are here. Everybody knows that it's going on. Everybody says they're doing everything they can do to eliminate it and, yet, time after time after time, we come back here, and we know that it's still going on.

Ms. PARNES. Mr. Chairman, if I could. Do not render a verdict yet on the Federal Government's response on this issue.

I would just say that the pricing data has been available to all of us for about 2 years now. And while I certainly understand your perspective that 2 years is a long time, the investigations that we're conducting are truly incredibly resource intensive, and they're very thorough.

And I think that when—you know, at the end of the day whatever conclusions we reach, I think that we will all be satisfied that either we have established that the underwriting criteria explain the disparities that the HMDA data are showing us, or we will be announcing cases based on ECOA violations.

Chairman WATT. Well, I appreciate your response. And it may be true, and I will acknowledge that the frustration that you are hearing coming out of this individual is not a frustration of only 2 years or 4 years of collection of data, it is a frustration of 61 years, 330 days. You know, I'm tipping up on 62 years here next month.

And we just have to get to a point where, you know, the Supreme Court apparently has already decided that we are there, that race is not a factor any more.

Well, we have to prove it if that's the case. If the Supreme Court is going to say that we're never going to take race into account any more in doing anything, then our Nation has to live up to that expectation.

So this is not, you know—to some extent, it's an expression of frustration that this is not happening based on this information but is more a reflection of frustration that comes with being on this earth and being an African-American for over 61 years now. So I'll just end with that.

Let me do what I have to do procedurally here.

The Chair will note that some members, including the Chair, may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record. And we would ask that you respond expeditiously.

I want to thank you on behalf of the ranking member and myself and the full subcommittee for appearing.

And unless there is something good for the order, or whatever the expression is, this hearing is adjourned.

Thank you.

[Whereupon, at 5:15 p.m., the hearing was adjourned.]

A P P E N D I X

July 25, 2007

Cong. Baca

Committee on Financial Services
Subcommittee on Oversight and Investigations
Hearing entitled "Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement"
Statement

Thank you Mr. Chairman for allowing me to participate in today's important hearing.

As the Chair of the Congressional Hispanic Caucus and as a member of the House Financial Services Committee, equal access to homeownership for all Americans is a high priority of mine.

I've grown increasingly concerned over the past several years about the disproportionate amount of higher priced subprime lending that is concentrated in the minority population and in minority neighborhoods.

According to the 2005 HMDA data, 52% of African Americans and 40% Latino are in high-cost, subprime loans as compared to 19% of white families.

For Hispanics, almost 20 percent who received high-interest, subprime loans are likely to go into foreclosure. Data shows that 73,000 out of 375,000 subprime loans made to Hispanics in 2005 are now likely to foreclose.

In my district in California, the foreclosure rate is now 3 times higher than it was just 1 year ago. And according to my local paper, the Press Enterprise, in San Bernardino County, 1,489 homes were foreclosed in the second quarter, up nearly 1,000 percent from 137 a year ago.

Some or most of these families could have qualified for a better, more affordable loan but were instead steered into a subprime loan by a lender or broker eager to make a profit. To be fair, not all brokers and lenders are bad and even subprime lending has value for some borrowers. But the bad apples are spoiling the bunch.

We need to wipe out mortgage discrimination and predatory lending once and for all. And we must do more to protect our families.

I look forward to hearing from today's witnesses about this important issue and yield back.

Opening Statement of Ranking Member Gary Miller
Oversight and Investigations Subcommittee Hearing
"Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement"

July 25, 2007

I thank Chairman Watt for convening this hearing today to examine how the Home Mortgage Disclosure Act (HMDA) has been used to help enforce our nation's fair lending laws. I am pleased that we have with us today a panel of banking regulators, enforcement agencies, industry representatives, and others to shed light on efforts to eliminate discrimination in the mortgage industry.

Housing finance is vital to helping families achieve the American Dream of homeownership and to the overall health of our economy.

To foster homeownership in this country, we must eliminate abusive lending practices while preserving and promoting access to affordable mortgage credit.

There is no question that some non-prime borrowers are subjected to abusive practices. This should absolutely be prevented.

However, there also is no question that vast numbers of borrowers who are not victims of such practices can be harmed by over-zealous efforts to restrict non-prime credit availability.

HMDA Data as a First Step to Detecting Unfair Mortgage Practices

HMDA data has been an important tool in striking this balance between protecting consumers while not inhibiting the availability of credit that gives many families the ability to become homeowners.

HMDA data helps to determine whether disparities exist so that our enforcement agencies can investigate such disparities to determine whether they are caused by illegal discriminatory practices.

I believe the question before us today is how the data has been utilized to enforce our fair lending laws and if more can be done to root out discrimination.

Clearly, the price of a mortgage should be based on the economic risk of making a loan, not on racial, ethnic, or gender considerations.

Sub-Prime Mortgages Make Homeownership Possible

As we hear from the panels today, I want to remind my colleagues that sub-prime lending is a legitimate segment of the financial services industry that gives consumers who are unable to obtain traditional financing the opportunity to achieve the dream of homeownership.

Sub-prime mortgage products have provided millions of Americans a way to achieve homeownership.

The sub-prime market offers customized mortgage products to meet customers' varying credit needs and situations.

And, as one would reasonably expect, sub-prime borrowers will pay a somewhat higher rate to offset their greater risk.

Literally millions of Americans are unable to qualify for the lowest rate mortgages available in the so-called "prime" (also called "conventional" or "conforming") market because they have less than perfect credit, or they can not meet some of the other tougher underwriting requirements of the prime market.

As we battle unscrupulous actors and work to protect homebuyers, we also have the duty and obligation of ensuring that we do not act in a way that constricts the flow of capital to credit-starved communities.

I look forward to hearing from the witnesses today, so that this Subcommittee can ensure that the detection and enforcement tools that are in place to protect homebuyers in this country are working appropriately.

Department of Justice

STATEMENT OF

GRACE CHUNG BECKER
DEPUTY ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION
DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON FINANCIAL SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

ROOTING OUT DISCRIMINATION IN MORTGAGE LENDING:
USING HMDA AS A TOOL FOR FAIR LENDING ENFORCEMENT

PRESENTED

JULY 25, 2007

Testimony of
Grace Chung Becker
Deputy Assistant Attorney General
Civil Rights Division
Department of Justice

Before the Committee on Financial Services
United States House of Representatives

As the Civil Rights Division celebrates its 50th Anniversary this year, it is an honor to appear before this committee to talk about the Division's fair lending enforcement.

As Deputy Assistant Attorney General for the Civil Rights Division, I review the work of the Housing and Civil Enforcement Section, which is charged with ensuring non-discriminatory access to housing, credit, and public accommodations. We understand the importance of these opportunities to American families, and we work hard to meet this weighty responsibility. The Division has a strong commitment to enforcing the Fair Housing Act, the Equal Credit Opportunity Act, Title II of the Civil Rights Act of 1964, the land use provisions of the Religious Land Use and Institutionalized Persons Act, and the Servicemembers Civil Relief Act.

Two of these federal civil rights laws enforced by the Housing and Civil Enforcement Section proscribe discrimination in mortgage lending. The Fair Housing Act, 42 U.S.C. § 3601, *et seq.,* prohibits discrimination in residential real estate-related transactions, including loans and other financial assistance, on the basis of race, color, religion, national origin, sex, familial status, and disability. The Equal Credit

Opportunity Act, 15 U.S.C. § 1691, *et seq.,* also known as ECOA, prohibits creditors from discriminating in any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, martial status, age, because an applicant receives income from a public assistance program, or because an applicant has exercised rights under the Consumer Credit Protection Act. Therefore, ECOA prohibits discrimination in consumer and business lending, as well as mortgage lending.

Our fair lending enforcement efforts protect borrowers' rights in a wide variety of contexts. All Americans have the right to purchase houses and automobiles, and to borrow money for their businesses or consumer purchases, free of illegal discrimination. While a lender may legitimately consider a range of factors in determining whether to make a loan to an applicant, illegal discrimination has no place in this determination.

Recent Fair Lending Cases

During 2006 and 2007, we have filed three fair lending lawsuits that illustrate the range of our fair lending efforts. In April 2006, the Division filed its first-ever sexual harassment case under the Equal Credit Opportunity Act in *United States v. First National Bank of Pontotoc*. In doing so, the Division relied upon its expertise in sexual harassment cases in the Fair Housing Act context. In the fair housing context, this Administration has almost tripled the number of lawsuits alleging a pattern or practice of sexual harassment by landlords against female tenants in the last 6 ½ years as compared to the same time period in the late 1990's. We have obtained appropriate injunctive relief and damages for the victims of up to $1.1 million—the highest jury verdict ever obtained by the Division in a fair housing case. The fair lending complaint alleges that a former vice president of the First National Bank of Pontotoc in Pontotoc, Mississippi, used his position to sexually harass female borrowers and applicants for credit. Our original complaint alleged that the former bank vice-president's conduct violated ECOA and that the Bank is responsible for the discriminatory conduct during the bank vice-president's tenure in that position. Recently, we amended the complaint to add a claim that the defendants also violated the Fair Housing Act. This case is currently in litigation, and more than a dozen female victims of the discrimination have come forward so far to tell their stories.

Last fall, we filed and resolved a "redlining" lawsuit against Centier Bank in Indiana, alleging violations of the Equal Credit Opportunity Act and the Fair Housing Act. In this case, we alleged Centier unlawfully refused to provide its lending products and services on an equal basis to residents of minority neighborhoods, thereby denying residential and small business loans to hundreds of prospective African-American and Hispanic borrowers. This practice is often called "redlining." Under the consent order the bank already has begun to open new offices and expand its lending operations in the previously excluded areas. The order also requires the bank to invest $3.5 million in a special financing program and spend at least $875,000 on outreach, marketing, and consumer financial education in these previously excluded areas over the next five years.

Earlier this year, we filed and resolved a case against Compass Bank of Alabama for violating the Equal Credit Opportunity Act by engaging in a pattern of discrimination on the basis of marital status. Compass Bank makes thousands of automobile loans each year through its network of hundreds of car dealerships in the South and Southwest. We alleged that the bank charged co-applicants who were not married to each other, or "non-spousal" co-applicants, higher interest rates than similarly-situated married co-applicants. Indeed, the Bank instructed its network of auto dealerships in writing to add 1 to 2 percentage points to the interest rate for joint applicants who were not married to each other. Under the consent order, which was signed by the federal judge in February, the Bank will pay up to $1.75 million to compensate several thousand non-spousal co-applicants whom we alleged were charged higher rates as a result of their marital status.

In addition, we currently are engaged in pre-suit negotiations in cases alleging that two automobile dealerships engaged in patterns or practices of discrimination, over a period of years, by charging African-American applicants for automobile loans higher interest rates than similarly-situated non-African-American applicants for such loans. Our investigations into these matters were conducted jointly with a State Attorney General's office.

<u>HMDA & Redlining</u>

A moment ago, I mentioned *United States v. Centier Bank,* a lawsuit alleging that the bank chose not to do business in minority neighborhoods because of the race, color, and national origin of the people who live there. Such "redlining" practices deny residents of minority communities equal access to residential, consumer, or small business credit. When communities are abandoned by prime lenders through redlining, those communities become targets for less scrupulous lenders who may target minority neighborhoods for abusive products or loans. Lawsuits challenging redlining practices thus are an effective means to combat predatory lending.

Traditionally, the Division has focused considerable fair lending resources on these lawsuits, with Centier being the fourth redlining case that we filed and resolved in this Administration. The development of a redlining lawsuit requires extensive analysis of the bank's lending data, which is made public pursuant to the Home Mortgage Disclosure Act, also known as HMDA. For each redlining investigation the Division undertakes, we conduct extensive statistical comparisons of the bank's residential lending patterns to the lending patterns of other banks and home mortgage lenders in that geographic area. Primarily in this way, the Division has utilized HMDA data extensively for well over a decade now.

HMDA Pricing Data

As the Committee knows, beginning with the year 2004, all home mortgage lenders that report under HMDA are required to collect and report certain data about the interest rates that they charge on the reported home loans. This information is often called "HMDA pricing data." The reported data is designed to identify so-called "higher-priced loans," most of which are subprime loans. In September 2005, the HMDA pricing data for calendar year 2004 was released publicly, and in September 2006, the HMDA pricing data for calendar year 2005 was released publicly. For each of these years, Federal Reserve staff published a study of the newly-released HMDA data finding that African-American and Hispanic borrowers receive higher-priced loans more often than non-Hispanic whites.[1]

The HMDA pricing data has provided the Division with a welcome, additional source of information for identifying potential investigations of whether a particular lender unfairly charges higher interest rates to a class protected under the fair lending laws.[2] But it is important to remember that the loan data available through HMDA is only a starting point – it cannot tell us whether any particular mortgage lender is discriminating. We analyze the HMDA pricing data as a starting point to identify disparities in the pricing of loans, primarily focusing on race or national origin. Where disparities are present, we conduct further analyses using publicly available data to determine whether there may be non-discriminatory explanations for the disparities. In deciding whether to initiate an investigation of a particular lender, the Division evaluates

[1] Regarding 2004 HMDA data, see "New Information Reported under HMDA and Its Application in Fair Lending Enforcement," 2005 Federal Reserve Bulletin 344. Regarding 2005 HMDA data, see "Higher-Priced Home Lending and the 2005 HMDA Data," 2006 Federal Reserve Bulletin A123.

[2] The Division identifies targets for potential fair lending investigations in a variety of ways, including referrals from bank regulatory agencies, referrals from HUD, citizen or organizational complaints and inquiries, and publicly available data (such as HMDA) or reports.

all available information, including any relevant data from the Federal Reserve studies and its own analysis of the HMDA data.

We also began to receive bank agency referrals based on the HMDA pricing data in the fall of last year. So far we have received three such referrals from the FDIC and two from the Federal Reserve Board.

In evaluating the HMDA data, it is important to recognize that subprime loans can serve a legitimate purpose. Some borrowers have bad credit histories and simply cannot qualify for the less costly prime loans. Under the Fair Housing Act and ECOA, the question is whether lenders are discriminating on the basis of race or national origin, or other proscribed grounds, against certain borrowers by charging them more than other borrowers, or by steering them to loans with high interest rates and fees even if they qualify for less-costly loans.

Based on DOJ analysis of the HMDA data and bank regulatory agency referrals, we have opened several investigations of lenders. During investigations of alleged discrimination in loan "pricing," we generally obtain detailed additional information from the lender that is not available through HMDA. In order to determine whether minority borrowers are being charged more than *similarly-situated* white borrowers, we need to analyze data about other factors that lenders can legitimately consider in setting interest rates. For example, the HMDA data does not include information such as a borrower's credit score, loan-to-value ratios, and debt-to-income ratios. In most cases, each of these factors has a direct impact on a borrower's mortgage interest rate. Other factors that directly affect the interest rate of a particular loan are the term of the loan, whether the rate is fixed or variable, and the amount of the loan ("jumbo" loans generally carry higher interest rates than those within the "conforming" limits for purchase by Fannie Mae or Freddie Mac). Conducting statistical and econometric analyses of additional data obtained from a lender enables us to assess whether those factors explain the pricing differences identified in the HMDA data.

We also seek information from the lender about its lending policies and practices and the characteristics of its various loan products, in order to evaluate the loan data and the results of our analysis in the context of that lender's business practices. We recognize that lenders determine the products they will offer, and the rates and fees for those products, taking into account a wide variety of factors, including the price it pays for the money it lends to borrowers ("costs of funds"), whether the lender holds loans in its portfolio or sells them in the secondary market, and whether the lender extends credit through its own officers or independent brokers. We analyze all the evidence in each case to determine which factors played a role in that lender's rate-setting practices.

These fair lending investigations require a substantial investment of time and resources. While I cannot discuss details of ongoing investigations, I am pleased to report that all of the lenders currently under investigation are cooperating with the Division.

We have completed and closed two such investigations and others are ongoing. For the investigations that are ongoing, we continue to evaluate whether enforcement action is appropriate. We expect to initiate more investigations in the coming months. These investigations may stem from the Division's own analysis, or may be referred from a bank regulatory agency.

The Division also works hard to coordinate our fair lending enforcement efforts with other agencies, so that federal government enforcement efforts in these areas are as efficient and effective as possible. The Division actively participates in the Inter-Agency Fair Lending Task Force, which includes representatives of the numerous federal agencies involved in the fight for fair lending. The Task Force meets regularly to share information and address issues related to topics such as pricing discrimination. In addition, since the first release of the HMDA pricing data, Division staff meets regularly with staff from the other two federal agencies designated along with DOJ to enforce fair lending laws against non-bank lenders: the Federal Trade Commission and the Department of Housing and Urban Development.

The Division shares this Committee's goal of utilizing all available information, including the HMDA pricing data, to identify and stop lending discrimination. We are working hard to achieve that goal, and we welcome the Committee's support.

For release on delivery
2:00 p.m. EDT
July 25, 2007

Statement of

Sandra F. Braunstein

Director, Division of Consumer and Community Affairs

Board of Governors of the Federal Reserve System

before the

Subcommittee on Oversight and Investigations

Committee on Financial Services

U.S. House of Representatives

July 25, 2007

Chairman Watt, Ranking Member Miller, and members of the Subcommittee, I am pleased to appear before you to discuss the Board's efforts to promote fair lending. It is widely known that there are racial and ethnic gaps in the availability and price of mortgage credit. These gaps have been highlighted by the Home Mortgage Disclosure Act (HMDA) data, including pricing data required by the Board's regulation. The HMDA data have brought attention to these gaps and spurred a variety of efforts to address them by lenders, consumer and civil rights advocates, the Federal Reserve and other federal and state agencies, and, as indicated by today's hearing, the Congress.

As with racial and ethnic disparities in income, education, employment, and healthcare, gaps in access to credit have long presented our society with moral, legal, social, and economic challenges. The Federal Reserve shares concerns that credit gaps may result in part from illegal discrimination, and we rigorously enforce compliance with the fair lending laws. When we find evidence of illegal discrimination, we take strong action. We recently referred two nationwide mortgage lenders to the Department of Justice (DOJ) because we found evidence that Hispanic and African-American borrowers paid more for their loans than comparable white borrowers.

In my testimony today, I will first discuss the Federal Reserve's efforts to ensure that banks maintain effective systems to prevent illegal discrimination; then, I will describe our efforts to detect and remedy violations when they occur. I will also explain more fully the recent mortgage pricing referrals to DOJ and the targeted pricing reviews on which they were based. As you have recognized by inviting many other government agencies to testify today, the Board has primary supervisory responsibility for only certain lenders, and my remarks are limited to how we supervise and enforce the law among those lenders.

An Overview of Fair Lending Supervision and Enforcement at the Federal Reserve

The Board has a long-standing commitment to ensuring that every bank it supervises complies fully with the federal fair lending laws, namely the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act. This commitment is reflected in our organizational structure: we have made consumer compliance supervision, including fair lending, a distinct function in the Reserve Banks and at the Board; we have a specialized Fair Lending Enforcement Section at the Board; and we specially train examiners in consumer compliance supervision and have them focus exclusively on that task. Those examiners prepare a stand-alone consumer compliance examination report bearing a distinct consumer compliance rating for each of the state member banks we supervise.

Our commitment to fair lending is also evidenced in how we make it an integral part of every consumer compliance examination we conduct. Federal Reserve examiners begin every consumer compliance examination by evaluating the institution's fair lending risk across all business lines, using the Interagency Fair Lending Examination Procedures. Examiners have long analyzed HMDA data as part of this process. Based on this evaluation, examiners identify specific business lines on which to focus, and in every examination at least one product or class of products is evaluated in detail. Additionally, examiners conduct fair lending reviews outside the usual examination cycle when warranted by heightened fair lending risk. For example, we conducted targeted mortgage pricing reviews outside the normal supervisory cycle after the first HMDA pricing data were released in 2005.

When conducting fair lending examinations, our consumer compliance examiners perform two distinct functions. First, examiners evaluate the bank's overall fair lending compliance program. In essence, examiners make sure that management is committed to fair lending and has put in place the appropriate systems, policies, and staff to prevent violations. Examiners assess whether the institution devotes a level of resources to consumer compliance that is commensurate with its size, the complexity of its business lines, and the fair lending risk of its business practices. Of course, the level of resources dedicated to fair lending will vary across institutions, but examiners require that every institution make fair lending a high priority, from the loan officer to the board of directors. If an institution's staff or systems fall short, examiners direct the institution to take corrective action.

Second, examiners determine if the bank has violated the fair lending laws. To that end, they review lending policies and practices to make sure they are not discriminatory. Examiners also test the institution's actual lending record for specific types of discrimination, such as underwriting discrimination in consumer loans, or pricing discrimination in mortgage or automobile lending. This testing for discrimination may use statistical techniques, manual reviews of loan files, or both. When examiners find evidence of potential discrimination, they coordinate closely with the Board's Fair Lending Enforcement Section, which brings additional legal and statistical expertise to the examination and ensures that fair lending laws are enforced consistently and rigorously throughout the Federal Reserve System.

Because the Federal Reserve requires banks to devote significant resources to fair lending, and because we examine them routinely for fair lending compliance, we expect fair lending violations--especially those involving a pattern or practice of discrimination--to be rare among the banks we supervise. Our experience has been that such violations are indeed rare, but when they occur, we do not hesitate to take strong action. If we have reason to believe that there is a pattern or practice of discrimination under ECOA, the Board, like the other federal banking agencies, has a statutory responsibility under that Act to refer the matter to DOJ, which reviews the referral and decides if further investigation is warranted. A DOJ investigation may result in a public civil enforcement action or settlement. DOJ may decide instead to return the matter to the Federal Reserve for administrative enforcement. When this occurs, we ensure that the institution corrects the problems and makes amends to the victims.

We take our responsibility to refer matters to DOJ seriously. In the first six months of this year alone, we referred five institutions after concluding that we had reason to believe that they had engaged in a pattern or practice of discrimination:

- Two referrals involved ethnic and racial discrimination in mortgage pricing by nationwide lenders. These matters will be discussed in more detail below.
- One referral involved racial discrimination in the pricing of automobile loans. The institution purchased loans in which auto dealers had charged higher interest rates, through the use of mark-ups, based upon the race of the borrowers. This pricing was permitted by the lender, who received a share of the mark-ups.
- One referral involved an institution with two loan policies that we found to be discriminatory. One policy prohibited lending on Native American lands. The other policy restricted lending on row houses, which resulted in discrimination against African-Americans.
- One referral involved discrimination against unmarried people. When underwriting consumer loans, the institution combined incomes for married applicants, but not for co-applicants who were unmarried.

Last year, we referred four institutions to DOJ for a wide range of issues after concluding that we had reason to believe they had engaged in a pattern or practice of discrimination. These issues included pricing discrimination in auto lending, mortgage redlining, and age discrimination:

- One referral involved redlining--that is, discrimination against potential borrowers on the basis of the racial composition of their neighborhoods. The institution's marketing strategy was based on negative racial stereotypes and, as a result, excluded a cluster of minority neighborhoods from its lending activity.

- Two referrals involved discrimination on the basis of marital status in auto loan pricing. The institutions charged non-spousal co-applicants higher interest rates than married couples.
- One referral involved discrimination on the basis of age. The institution offered an "over 50" account that provided for an interest rate reduction on consumer loans if payment was made through automatic debit. This interest rate reduction was not offered to borrowers who did not have an "over 50" account.[1]

We referred an additional five matters in 2004 and 2005.[2] One referral involved racial and ethnic discrimination in mortgage underwriting, and the remaining four referrals involved marital status discrimination in auto and commercial lending. We believe that our referral record, which is publicly documented in our annual reports to Congress, demonstrates the Board's long-standing commitment to rigorous fair lending enforcement.

Our referrals account for two of the three public fair lending enforcement actions that DOJ has brought in the past five years based on agency fair lending referrals. One of these enforcement actions involved redlining in mortgage, consumer, and small business lending; the other involved marital status discrimination in the pricing of automobile loans.[3]

If a fair lending violation does not constitute a pattern or practice, the Federal Reserve makes sure that the bank remedies it. From 2004 through 2006, we cited approximately sixty banks for such violations involving discrimination on a prohibited basis under ECOA.[4] Many of these violations involved improperly requiring spousal signatures on loan documents, which discriminates on the basis of marital status.

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[1] ECOA generally prohibits creditors from considering age when evaluating creditworthiness, except that a creditor may consider the age of an applicant 62 years or older in the applicant's favor.

[2] One of our 2005 referrals was included in our 2006 annual report because of a change in reporting periods. The referral had not been reported in the 2005 annual report, which only included referrals made through June 2005. Additionally, one referral was inadvertently omitted from the 2005 annual report.

[3] See United States v. First American Bank, Civil Action No. 04C 4585 (N.D. Ill. July 13, 2004), and United States v. Compass Bank, Civil Action No. 07-H-0102-S (N.D. Ala. January 12, 2007).

[4] In total during this time period, we cited almost 400 banks for all types of Regulation B violations, including violations that do not involve discrimination. In addition, during this time, we cited almost 300 banks for violations of HMDA.

Most lenders readily agree to correct fair lending violations. In fact, lenders often take corrective steps as soon as they become aware of a problem. Thus, the Federal Reserve generally uses informal supervisory tools, such as Memoranda of Understanding between the bank's Board of Directors and the Reserve Bank, or Board Resolutions, to ensure that violations are corrected. If necessary to protect consumers, however, we can and do bring public enforcement actions. In 2004, we publicly assessed a $70 million civil money penalty against CitiFinancial Credit Company and also ordered restitution to borrowers.[5]

Fair Lending Enforcement Involving Discrimination in Mortgage Pricing

I would now like to discuss the Federal Reserve's supervisory and enforcement activities against mortgage pricing discrimination. As mentioned earlier, we referred two nationwide lenders this year to DOJ for mortgage pricing discrimination. The first referral involved two of the fair lending risk factors that the agencies have identified and used for some time: (1) broad discretion in pricing by loan officers or brokers, and (2) financial incentives for loan officers or brokers to charge borrowers higher prices. The lending institution gave its loan officers discretion to charge overages and underages, that is, to set loan prices higher or lower than its standard rates. The institution also paid loan officers more if they charged overages. We found evidence that African-American and Hispanic borrowers paid higher overages than comparable non-Hispanic whites in multiple Metropolitan Statistical Areas (MSAs).

The second referral involved loans originated through mortgage brokers where the institution also permitted pricing discretion. African-Americans and Hispanics paid higher annual percentage rates than comparable non-Hispanic whites in multiple MSAs. While pricing

[5]The Federal Reserve alleged that CitiFinancial violated ECOA by improperly requiring spousal signatures and that it engaged in unsafe and unsound lending practices. See In the Matter of CitiGroup Inc. and CitiFinancial Credit Company, Order to Cease and Desist and Order of Assessment of a Civil Money Penalty Issued Upon Consent (May 27, 2004).

discretion and financial incentives to charge borrowers more do not always result in fair lending violations, these referrals underscore that it is critical for lenders that permit these practices to have clear policies about their use and to monitor them effectively.

Evaluating Pricing Discrimination Risk by Analyzing HMDA Data and Other Information

The two previously mentioned referrals resulted from a process of targeted reviews of institutions for pricing discrimination that the Federal Reserve initiated when the HMDA pricing data first became available in 2005. We developed, and continue to refine, a HMDA data analysis program that identifies institutions with statistically significant pricing disparities by race or ethnicity.[6] Because HMDA data lack many factors that lenders routinely use to make credit decisions and set loan prices, such as information about the borrower's creditworthiness and loan-to-value ratios, HMDA data alone cannot be used to determine whether a lender discriminates. Thus, we analyze HMDA data in conjunction with other supervisory information to evaluate a lender's risk for discrimination.

For the 2005 HMDA pricing data--the most recent year for which the data are publicly available--Federal Reserve examiners performed a pricing discrimination risk assessment for each institution that we identified through our HMDA data analysis. These risk assessments incorporated not just the institution's HMDA data, but also the strength of the institution's fair lending compliance program, our past supervisory experience with the institution, consumer complaints against the institution, and the presence of fair lending risk factors such as discretionary pricing. Based on these comprehensive assessments, we determined which

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[6] Our HMDA analysis program was originally developed to analyze denial data and examiners continue to use this analysis when they decide the focus of a fair lending examination. Detecting underwriting discrimination remains an important part of the examination process. In 2005, for example, we referred an institution to DOJ because it had rejected several minority applicants for "insufficient collateral" without ordering an appraisal, but it had not rejected any white applicants for this reason without first ordering an appraisal. Because of a change in reporting periods, this referral appears in our 2006 annual report.

institutions would receive a targeted pricing review. Depending on the examination schedule, the targeted pricing review could occur as part of the institution's next examination, or outside the usual supervisory cycle.

Even if an institution is not identified by our HMDA analysis, examiners may still conclude that the institution is at risk for pricing discrimination and perform a pricing review. We supervise many institutions that are not required to report data under HMDA. Also, many of the HMDA-reporting institutions we supervise originate few higher-priced loans and, therefore, report very little pricing data. For these institutions, examiners analyze other available information to assess pricing discrimination risk and perform a pricing review when appropriate.

Performing Targeted Pricing Reviews to Detect Mortgage Pricing Discrimination

During a targeted pricing review, the Federal Reserve collects additional information, including potential pricing factors that are not available in the HMDA data, to determine whether any pricing disparity by race or ethnicity is fully attributable to legitimate factors, or whether any portion of the pricing disparity may be attributable to illegal discrimination. To perform these reviews, we use analytical techniques that account for the increasing complexity of the mortgage market. Two industry changes in particular--the proliferation of product offerings and the increased use of risk-based pricing--have significantly increased the complexity of fair lending reviews. It is not uncommon for a lender to offer many different products, each with its own pricing based on the borrower's credit risk.

To effectively detect discrimination in the expanding range of products and credit risk categories, the Federal Reserve increasingly uses statistical techniques. When performing a pricing review, we typically obtain extensive proprietary, loan-level data on all mortgage loans originated by the lender, including prime loans (i.e., not just higher-priced loans reported under

HMDA). To determine how to analyze these data, we study the lender's specific business model, pricing policies, and product offerings. With respect to product offerings, we take great care in defining the products or class of products we analyze, since each product may have different pricing that must be considered in the analysis.

On the basis of our review of the lender's policies, we determine which factors from the lender's data should be considered. We then create a statistical model that takes into account those factors and is tailored to that specific lender. We typically will test for discrimination in particular geographic markets, such as MSAs. It is important to look at specific markets because relatively small unexplained pricing disparities at the national level can mask much larger disparities in individual markets.

As I mentioned earlier, based on our pricing reviews, we concluded that we had reason to believe that two nationwide lenders had engaged in a pattern or practice of discrimination, and we referred them to DOJ. After accounting for legitimate factors reflected in the lenders' specific pricing policies, we found that minorities still paid more for their mortgages than non-Hispanic white borrowers in multiple MSAs. In the remaining pricing reviews that we have completed, we found that minorities did not pay more than non-Hispanic white borrowers, after taking into account the legitimate factors that the lenders used to price loans.

Insights Related to the Pricing Review Process

These reviews have reinforced for the Federal Reserve several important aspects of fair lending supervision and enforcement. First, HMDA data are most helpful as a fair lending tool when they are used in conjunction with other risk factors and supervisory information to identify institutions that warrant closer review. In particular, our referrals have confirmed that pricing discretion and incentives to charge more remain significant fair lending risks. Second, to be accurate, our reviews need to be based on the institution's specific pricing policies and product offerings. Unless we take the time to understand the lender's business and tailor our analysis accordingly, we risk either missing violations or erroneously concluding that a lender discriminated when it did not. Third, it is important to test separately for discrimination in different geographic markets. A lender may have a relatively small, unexplained pricing disparity across the nation as a whole, but still discriminate in distinct geographic markets, such as individual MSAs. As we move into our third year of analyzing the HMDA pricing data, we will continue to leverage these data and our examination resources to effectively enforce the fair lending laws.

Conclusion

The Federal Reserve is committed to addressing racial and ethnic gaps in the availability and affordability of credit. With our supervisory and enforcement authority, we ensure that banks we supervise comply fully with the fair lending laws and take strong action in the rare cases when they do not. More broadly, our regulation requiring lenders to report data on mortgage pricing has helped shine a brighter light on racial and ethnic pricing disparities and spurred efforts from all quarters to address them. This hearing is an important example of those efforts, and we are pleased to have this opportunity to work with you to ensure that consumer credit markets are free from illegal discrimination.

For Release Upon Delivery
2:00 p.m., July 25, 2007

TESTIMONY OF

CALVIN R. HAGINS

DIRECTOR FOR COMPLIANCE POLICY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON FINANCIAL SERVICES

OF THE

U.S. HOUSE OF REPRESENTATIVES

JULY 25, 2007

Statement Required by 12 U.S.C. § 250:

The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

INTRODUCTION

Chairman Watt, Ranking Member Miller, and members of the Subcommittee, I am Calvin Hagins, Director for Compliance Policy, at the Office of the Comptroller of the Currency (OCC). I am pleased to appear before you today to discuss fair lending issues, and to describe how the OCC supervises national banks to ensure compliance with the fair lending laws.[1]

This hearing presents a timely opportunity to discuss important issues that have been raised in the Subcommittee's letter of invitation, including the data reported by lenders under the Home Mortgage Disclosure Act (HMDA) on high cost home loans. For the third year in a row since certain high cost loan pricing data have been reported under HMDA, the data have indicated that a higher percentage of black and Hispanic borrowers have received high cost home purchase mortgages than have white or Asian borrowers.[2] Such results by themselves do not equate to unlawful discrimination, because HMDA data alone does not permit comparisons of borrowers who are truly similarly situated in terms of risk. Nevertheless, these results do mean that lenders and regulators need to get behind these numbers to make such comparisons to determine whether unlawful discrimination does in fact exist, especially with respect to those institutions where preliminary analysis of the HMDA data indicates elevated levels of fair lending risk.

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[1] In this testimony, the term "national banks" includes operating subsidiaries of national banks, because the federal fair lending laws apply to these operating subsidiaries in the same way they apply to the parent banks, and the OCC regulates operating subsidiaries for these purposes in the same way it regulates national banks.

[2] *See* Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA Data," *Federal Reserve Bulletin*, vol. 92 (2006), at pp. A158 - 159, (FRB Report on 2005 HMDA Data) (regarding the impact of neutral borrower- and lender-related factors in reducing these reported differences.)

The OCC has long had a strong commitment to ensuring that national banks comply with fair lending laws and that consumers who seek credit from national banks are evaluated based on legitimate, nondiscriminatory factors. And, we are committed to ensuring that, for the institutions we supervise, any differences in lending patterns reflected in the HMDA data are the result of legitimate factors and not illegal discrimination. My testimony will describe the OCC's supervision and enforcement process for fair lending compliance, and the role that the HMDA data, including the relatively new loan pricing data, play in that process. We are committed to a rigorous and comprehensive program of fair lending oversight and to ongoing improvement in our activities as additional data and new analytic tools become available.

I. MORTGAGE LOAN PRICING CONCERNS

The mortgage market has grown substantially more complex in recent years. Not long ago, only a limited number of mortgage products were available in the marketplace. In addition, the price (interest rate and fees) that a borrower paid for these mortgages generally was standardized, and varied primarily by loan product. For example, loans were priced based on the type and purpose of the loan, the amount and term of the loan, the loan-to-value ratio, and the collateral. Prices generally did not vary based on the creditworthiness characteristics of the borrower.[3]

We have a very different mortgage market today. The market has evolved in response to competition among lenders for loan volume; growth and standardization in the secondary market; better access to credit reports; advances in technology, including the use of automated underwriting and credit scoring systems; and the development of

[3] FRB Report on 2005 HMDA Data at pp. A125 - 126.

risk-based pricing. These changes generally have led to less subjectivity in the loan underwriting process, greater product availability and choice, and greater choice in loan terms and prices depending on borrower risk. Lenders now offer a wide array of products and pricing structures, which has made it easier for borrowers who formerly did not meet traditional lending standards to obtain credit and purchase homes.[4]

Loan pricing varies, and can be influenced by a number of factors, including: borrower credit characteristics; debt-to-income ratios; cost of funds; prepayment risks; overhead costs; local market conditions and competition; the willingness and ability of the borrower to negotiate; and loan processing channels, including use of brokers. Interest rates can vary hundreds of basis points across all mortgage products, even for "prime" borrowers, depending upon the borrower's credit circumstances and the features of the loan they choose. Price flexibility has had the positive effect of expanding access to mortgage credit and, as a result, expanding homeownership. But, it has also led to concerns about the fairness and legitimacy of pricing decisions on individual loans. The increased number of variables in the lending process also has made the task of identifying unlawful discriminatory lending practices, particularly unlawful discriminatory pricing practices, more complicated and challenging than in the past.

HMDA data, since being expanded in 1989 to include the race and gender of borrowers and in 2004 to include certain loan pricing information, have put into sharp focus concerns about illegal lending discrimination. Even though the data elements that

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[4] In contrast to their share of the mortgage market generally, national banks have not been dominant players in the subprime loan market, which generally lends to borrowers with impaired or limited credit records. Roughly one-third of the approximately $3 trillion in total mortgages that were originated in 2006 were originated by national banks or their subsidiaries. Subprime lending by national banks and their subsidiaries in 2006, however, amounted to less than 10% of the total $600 billion in subprime mortgage originations by all lenders.

are reported are limited, and conclusions about legal compliance cannot be drawn solely from these reports, HMDA has provided greater transparency to lending practices, most recently in the higher-cost segment of the mortgage market. As a result, the HMDA data have led to stepped-up compliance efforts by lenders, who must answer to the banking agencies, other regulators, Congress and the public, to explain why any such disparities are due to legitimate nondiscriminatory factors, and not to illegal discrimination.

II. THE OCC'S SUPERVISORY AND ENFORCEMENT PROCESS FOR ENSURING COMPLIANCE WITH FAIR LENDING LAWS

Assuring fair access to credit and fair treatment of national bank customers are fundamental responsibilities of the OCC as administrator of the national banking system. The OCC comprehensively examines national banks to ensure that they are operating in compliance with applicable laws, regulations, and supervisory guidance and in a safe and sound manner.[5] National banks are subject to an array of laws and regulations designed to prevent illegal discrimination and ensure fair treatment of consumers.[6] In the fair lending area, two federal statutes protect consumers from discrimination in credit transactions: the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act.

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[5] 12 U.S.C. § 481.

[6] These statutes include, in addition to the fair lending laws, the Federal Trade Commission Act's prohibition against unfair or deceptive acts or practices, 15 U.S.C. § 45; the Truth in Lending Act (which encompasses the Home Ownership and Equity Protection Act of 1994), requiring creditors to provide disclosures about terms and costs of credit and providing enhanced protections with respect to certain high cost mortgages, 15 U.S.C. § 1601 *et seq.*; the Real Estate Settlement Procedures Act, requiring advance disclosure of settlement costs in residential real estate transactions and prohibiting kickbacks or unearned fees for settlement services, 12 U.S.C. § 2601 *et seq.*; the Community Reinvestment Act, requiring the OCC to assess a national bank's record of helping to meet the credit needs of its entire community, 12 U.S.C. § 2901 *et seq.*; and the OCC's Guidelines Establishing Standards for Residential Mortgage Lending Practices, 12 C.F.R. Part 30, App. C.

ECOA and its implementing regulation prohibit discrimination against applicants for credit on the basis of race, color, religion, national origin, sex, marital status, age, receipt of public assistance income, or the exercise of rights under the Consumer Credit Protection Act.[7] ECOA designates the OCC as the enforcing authority with respect to national banks.[8]

The Fair Housing Act prohibits discrimination in making a residential real estate-related transaction available on the basis of race, color, religion, national origin, sex, familial status, or handicap.[9] The OCC enforces the Fair Housing Act as part of its authority to ensure national banks' compliance with applicable law.[10] Accordingly, the OCC examines national banks for compliance with the Fair Housing Act as well as ECOA.

A. The Supervisory Process

The OCC's fair lending supervisory and enforcement process is designed to assess and monitor the level of fair lending risk in every national bank; assess compliance with fair lending laws and regulations; obtain corrective action when significant weaknesses or deficiencies are found in a bank's policies, procedures, and controls relating to fair lending; and ensure that enforcement action is taken when warranted, including referrals to the United States Department of Justice and notifications to the United States Department of Housing and Urban Development (HUD).

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[7] 15 U.S.C. § 1691(a); 12 C.F.R. 202.4.
[8] *Id.* at § 1691c(a)(1)(A).
[9] 42 U.S.C. § 3605.
[10] *See* 12 U.S.C. § 1818.

The OCC uses a combination of analytical tools, lending information, and risk-based targeted fair lending examinations to identify and test for potential discriminatory practices. As described in greater detail below, our supervisory process entails several steps including: (1) risk assessment and screening; (2) statistical analytics and on-site examinations; and (3) enforcement and referrals.

1. *OCC Fair Lending Risk Assessments.*

The foundation of the OCC's supervisory process is the detailed, core knowledge that examiners develop and maintain about each bank's organizational structure, culture, business lines, products, services, customer base, and level of risk. In the area of fair lending, this involves an in-depth understanding of the bank's retail credit operations. The OCC's examination guidance directs examiners to consider fair lending risk as part of our supervisory process, including the nature, scope, and volume of the bank's activities, the quality of the bank's risk management systems and personnel, findings in previous risk assessments, and whether there have been recent changes in products, systems, or processes that may affect fair lending risk. Examples of factors related to fair lending that may be considered, as appropriate, in conducting risk assessments include HMDA data; types of products offered; origination channels, including reliance on third party brokers; pricing, underwriting, and compensation policies and procedures; internal controls, self-evaluations, and self-testing activities; servicing values, market environment, and profitability; loan application processes; complaint data; comments in the bank's Community Reinvestment Act (CRA) public file; and the bank's own audit results.

2. *OCC Fair Lending Screening Process.*

While regular risk assessments allow examiners to establish a fair lending supervisory strategy for each national bank, this process is significantly augmented by the OCC's annual fair lending screening process. Through a successive series of steps and filters, starting with all of the HMDA loan information filed annually by national banks, the OCC identifies those institutions, loan products, markets, and prohibited basis categories that appear at greatest risk for discriminatory practices. Indeed, when combined with our regular risk assessments, this screening process is central to our risk-based approach to fair lending supervision because it hones in on the institutions where we conduct our most in-depth fair lending examinations (and is similar to the screening process conducted by the Federal Reserve Board.)

Starting in 2000, the OCC began using an annual screening process to enhance our regular supervisory risk assessments and to better target our examination resources to those institutions and products with the highest fair lending risk. The screening process incorporates HMDA data and other sources of information to assist examiners in identifying banks exhibiting those risks that will be scheduled for in-depth fair lending examinations. While HMDA data do not contain certain key items of information necessary for a full understanding of underwriting and pricing decisions, such as the borrower credit history, the data do provide a very important screening and risk identification tool that we use regularly in our fair lending screening and examination process.[11]

[11] *See* Frequently Asked Questions About the New HMDA Data at pp. 2-3, 5-6 (Apr. 3, 2006), *available at* www.occ.treas.gov/ftp/release/2006-44a.pdf.

The Federal Reserve Board collects and compiles HMDA data and reviews the data for errors on behalf of the federal banking agencies. The reported information includes data on type and purpose of the loan; race, ethnicity and gender of the borrower and co-borrower; geographic location of the property; "rate spread" and HOEPA status;[12] and action taken on the application. For a given year, the OCC generally receives HMDA data for national banks from the Federal Reserve in June of the following year. These files contain data on approximately eight million loan applications received by national banks during the prior calendar year.

Once the OCC receives the national bank data from the Federal Reserve, OCC economists run the data through three screens that have been developed by OCC fair lending experts. These screens test for national banks that are outliers when compared to all national banks in terms of disparity ratios by race, ethnicity, and gender for: 1) denial rates; 2) the incidence of reported "rate spread loans";[13] and 3) the presence of other indicators in HMDA data relating to possible differences in treatment in terms and conditions.

a. Use of HMDA Pricing Data in OCC Screening Process.

Loan pricing information reports are now available under HMDA for lending activity covering the years 2004, 2005, and 2006, although the agencies just received the data for 2006 lending in June of this year. Pricing disparities varied somewhat between

[12] The term "rate spread" refers to the requirement in Regulation C (HMDA) that lenders report the spread between the APR on the loan and the rate of Treasury securities of comparable maturity. The requirement is triggered if the APR exceeds the Treasury security rate by 3 percentage points, for first lien loans, and by 5 percentage points, for subordinate lien loans. The term "rate spread loan" refers to a loan that meets these reporting thresholds. The term "HOEPA status" refers to the requirement in Regulation C that lenders report if a loan is subject to the Home Ownership and Equity Protection Act of 1994. *See* 12 C.F.R. § 203.4(a)(12) and (13).

[13] As noted above, lenders must report the spread between the APR on a loan and the rate on Treasury securities of comparable maturity if the spread exceeds 3 percentage points for a first lien loan and 5 percentage points for a subordinate lien loan. 12 C.F.R. § 203.4(a)(12).

2004 and 2005, but generally, data from the HMDA reports for those years indicate that black and Hispanic borrowers received a higher proportion of higher cost loans than white or other borrowers. For example, in 2005, 54.7% of black borrowers and 46.1% of Hispanic borrowers received rate spread first lien home purchase loans, as compared to 17.2% of white borrowers.[14]

Proportionally, higher cost loans are not as prevalent in national banks as in other categories of lenders. Nevertheless, national bank loans demonstrate similar patterns of disparity as the loans of other lenders, although the magnitude of such disparity in national banks has been lower than the aggregate totals for all lenders. Thus, for national banks in 2005, 34.3% of black borrowers and 21.6% of Hispanic borrowers received rate spread first lien home purchase loans, as compared to 8.7% of white borrowers.

The 2006 data is similar to the 2005 data. For all lenders, the 2006 data show similar disparities as in 2005 in the incidence of rate spread lending for black and Hispanic borrowers seeking first lien home purchase loans. The 2006 data also continue to show that the proportion and disparities in rate spread lending by national banks for black and Hispanic borrowers are significantly lower than the national figures.

Reasons for the disparities in the incidence of rate spread loans are not apparent from the HMDA data, and Federal Reserve Board studies indicate that the HMDA data, taken alone, may overstate the degree to which race may be a factor in pricing disparities. The Board found that the gross mean incidence of higher price lending for black and

[14] FRB Report on 2005 HMDA Data at p. A160. The incidence of rate spread loans was significantly higher for all lenders in 2005 than in 2004, due to various factors including changes in the interest rate environment. FRB Report on 2005 HMDA Data, at pp. A141-144. In 2004, the aggregate data for all lenders showed that 32.4% of black borrowers and 20.3% of Hispanic borrowers received a rate-spread first lien home purchase loan, as compared to 8.7% for white borrowers. FRB Report on 2005 HMDA Data at p. A160. For national banks, gross disparities in 2004 were lower than the figure for all lenders: 15.4% of black borrowers and 7.1% of Hispanic borrowers received rate spread first lien home loans, as compared to 3.1% of white borrowers.

Hispanic borrowers declines substantially when the data are adjusted by applying just a few borrower-related factors, such as income, loan amount, and property location, and by controlling for the lender used. These basic factors account for a substantial portion of the gap between black and Hispanic borrowers and white borrowers in the incidence of rate spread lending reflected in the 2004 and 2005 HMDA data.[15] However, while a larger percentage of black and Hispanic borrowers received rate spread loans than white and Asian borrowers, analysis of the HMDA data indicates that the average rates they pay on those rate spread loans are about the same as the rates paid by white and Asian borrowers that receive such loans.[16]

The OCC uses HMDA data in our fair lending screening process, and, in particular, we incorporate HMDA pricing data in our screens to identify and select banks for fair lending examinations based on risk. With respect to rate spread loans reported in those years, OCC economists and examiners test for differences in rate spread incidences between the prohibited basis groups and the control group. Our examiners follow up on any disparities, and conduct examinations of banks targeted for examination based on this screening process, as well as our risk assessments. This is the process we used for our screens for 2004 and 2005 data, and we are following a similar process with respect to the 2006 HMDA pricing information.

b. Other Screens.

In addition to these three screens, the OCC uses two other screens that rely on HMDA data and Census Bureau data to assess application patterns in metropolitan

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[15] FRB Report on 2005 HMDA Data, at p. A160. For first-lien home purchase loans, the report indicates that these factors account for all but 10 percentage points of the gap between black and white borrowers in 2005, and 7 percentage points in 2004.
[16] FRB Report on 2005 HMDA Data, at p. A159.

statistical areas. We also incorporate the results of pricing screens that the Federal Reserve Board performs. While there can be substantial overlap between the Federal Reserve's results and the results we obtain, there is not complete overlap because the screening parameters we use are not identical, and any additional banks flagged by the Federal Reserve's screens are included in our list of institutions to receive further scrutiny.

Finally, our annual screening lists contain two random sample components. First, the entire population of national banks is randomly sampled to develop a list of banks that will receive in-depth fair lending examinations. Our random sampling ensures that each national bank faces the possibility of an in-depth examination in any given year, even if the bank does not report HMDA data and even though it has not triggered our risk-based screening criteria. The OCC also randomly samples OCC-supervised credit card banks to develop a separate list of those institutions that will receive fair lending examinations.

The OCC periodically reviews and modifies its screening process to enhance its effectiveness, and to incorporate new sources of risk information as they become available. For example, credit scores have been proven to be predictive of loan performance, and are used routinely by mortgage lenders, but are not reflected in HMDA data. Therefore, the OCC and the other Federal Financial Institution Examination Council (FFIEC)[17] member agencies are in the process of purchasing an external database that will provide us the additional capability of mapping credit scores by census

[17] The federal banking agency members of the FFIEC include the OCC, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the National Credit Union Administration.

tract. This data should help in our general assessment of fair lending risks in particular geographies.

After we have developed preliminary screening lists, the lists are sent to examiners of the banks identified on the list for review.[18] The banks that appear on the final screening lists receive an in-depth, on-site fair lending examination.

3. *OCC Fair Lending Examinations.*

The OCC's fair lending supervisory process is a multi-step process for assessing a national bank's compliance with fair lending laws. Ultimately, these steps are designed to lead to a determination of whether or not there is a reason to believe that a bank has engaged in unlawful discrimination that would require a referral to the Department of Justice or HUD, or enforcement action by the OCC. After we identify banks that appear to exhibit the highest fair lending risk through our fair lending risk assessment and screening steps, the next step is the fair lending examination itself.

Our fair lending examinations use interagency fair lending examination procedures and additional OCC-developed analytical tools to evaluate the credit decisions made by a bank to help us determine whether different outcomes in lending decisions are the result of unlawful discrimination. Our examiners rely on the comprehensive and detailed examination guidance contained in fair lending examination procedures, which were developed with the other FFIEC agencies.[19] These procedures contain detailed guidance for assessing risks of unlawful behavior involving overt discrimination,

[18] In a small number of instances, banks may be added to, or removed from, the list based on recommendations by examiners concerning the level of fair lending risk.
[19] Comptroller's Handbook, *Fair Lending Examination Procedures* (Apr. 2006) (*Examination Procedures*), *available at* http://www. occ.treas.gov/handbook/fairlep.pdf. The OCC's *Examination Procedures* incorporate the Interagency Fair Lending Examination Procedures, as well as OCC-specific supplemental material.

underwriting and pricing discrimination, steering, and discriminatory redlining and marketing.[20]

Today, it is rare for our examiners to encounter overt evidence of unlawful discrimination, such as a written lending policy that treats applicants differently on a prohibited basis.[21] Instead, what we may see is information indicating different lending outcomes for individuals or groups. Our supervisory approach is then to evaluate the factors a bank relies on to explain their credit decisions, and to reach our own conclusions about whether these factors are legitimate, business-related, and nondiscriminatory, and that they do in fact explain the outcomes. If disparities remain that cannot be attributed to these legitimate factors, then examiners preliminarily conclude that there is reason to believe that the disparities are the result of unlawful discrimination, and we then move to the enforcement and referral process described below.

a. Setting the Focus and Scope of the Examination.

Prior to beginning an examination, our examiners first develop one or more "focal points" for the examination. A "focal point" encompasses the loan product, market, decision center, time frame, and prohibited basis and control group to be analyzed.[22] The development of focal points assists our examiners in concentrating resources on the areas of highest risk. In addition, given the tremendous diversity in mortgage products and payment options available today, it is critical that our focus is on treatment of similarly situated borrowers within the same product types, and our focal point selections helps us

[20] *Id.* at pp. 23-29.
[21] For example, the OCC has found explicit policies to treat applicants differently based on age or marital status, such as a policy that required younger applicants to have a co-signer, and a policy in which the bank would evaluate information about the income and employment of a co-applicant spouse, but not comparable information about a non-spouse co-applicant.
[22] *Examination Procedures* at p. 10.

to do that. For example, home improvement loans would not be grouped together with home purchase loans for analysis. The screening lists described above help identify focal points for our examiners, especially for banks in the midsize and community bank program. Focal points recommended through the screening process, however, can be modified if the circumstances warrant, and our examiners consider HMDA data and other relevant information in finalizing focal points for their fair lending examinations.

Once focal points are selected, examiners determine the examination intensity. The intensity of the examination refers to the breadth and depth of the analysis that will be conducted with respect to the loan products that have been selected for evaluation, and it identifies discrimination risk factors for the products to be evaluated based on information about the bank's risk profile, its compliance risk management procedures and controls, its lending policies, and audits.[23] Examiners also may consider the bank's own self-evaluations in setting the intensity of the examination.[24]

Examiners conduct an underwriter interview to document the underwriting criteria the bank uses, how they are applied, whether changes have been made during the time frame being reviewed, and the degree of discretion that is exercised in lending and pricing decisions.[25] This information is used when examiners conduct transaction testing and file reviews to ensure that the bank complied with its stated policies. If statistical modeling is used in the examination, a thorough review of bank policies assists in ensuring that the model encompasses key variables used in underwriting or pricing decisions by the bank. Examiners also review policies and procedures to ensure that no overtly unlawful discriminatory factors are used in evaluating applicants.

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[23] *Examination Procedures* at pp. 12-13, pp. 33-34 & App. A.
[24] *See Examination Procedures* at App. H.
[25] *Id.* at p. 36 & App. J.

b. Use of Statistical Analysis.

For banks that have a large volume of applications, as well as a variety of loan product types, OCC economists may develop a statistical model to compare information from large numbers of files and to test for potential unlawful discrimination. The statistical model is an automated comparative file review of all applications or originations in a given population, such as all files relating to a particular loan product. As explained in more detail below, an important advantage of statistical modeling is that it can compare a large number of files simultaneously over all the relevant factors -- something that is very difficult to do with human judgment alone. Thus, the use of statistical tools in fair lending examinations enables the OCC to conduct comprehensive, risk-based examinations, and the methodologies we use are consistent with principles and methods generally accepted by the federal courts and consistent with the approach taken by the Department of Justice in fair lending litigation.

Examiners first review the bank's underwriting and pricing policies, and then work with quantitative experts to construct a statistical model to test for potential disparate treatment. As part of this process, the OCC receives a large amount of information from the bank that is not contained in the HMDA data and which may explain variations in underwriting and pricing decisions by race and ethnicity. For example, underwriting policy information can include cutoffs or threshold values for certain key variables, like debt-to-income ratios. For pricing examinations, examiners request from the bank information such as rate sheets, policies on "overages" and "underages,"[26] and exceptions to pricing policies. OCC economists often model the

[26] An "overage" occurs when a lender permits a loan officer or broker to impose a higher number of points or a higher interest rate on a loan than the lender's target price for the loan product. The "overage," or the

underwriting and pricing decisions using commonly accepted statistical techniques such as logistic regression (in the case of underwriting) or linear regression (in the case of pricing).[27] As underwriting and pricing decisions can vary by bank, channel, and product, the exact model specifications also can vary bank to bank, and exam to exam. Once the model is developed, we focus on the magnitude and significance of the estimated disparities between prohibited basis groups and a control group, using standard statistical tests.[28] These techniques help to identify particular applications or originations that appear to be outliers or to identify applicants who appear to be similarly situated, but who experienced different outcomes. The corresponding loan files then can provide examiners with a better starting point for comparison than that which could be achieved through random selection.

c. *Comparative File Reviews.*

In mid-size and community banks, which have smaller volumes and less diversity in loan types, after setting the examination focus and scope, the next stage of a fair lending examination is typically a comparative file review, rather than the use of statistical analysis.[29] Examiners review files to compare denied versus approved applicants who are similarly situated, or to compare the terms and conditions offered to

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difference between the actual price on a loan and the target price, typically is shared between the lender and the loan officer or broker as a means of increasing compensation. An "underage" occurs when the actual loan price is lower than the lender's target price.

[27] In general, a regression analysis seeks to explain the relationship between an outcome (e.g., a pricing or underwriting decision) and variables that may explain that outcome (e.g., credit score, debt-to-income ratio, or loan-to-value ratio). A "linear regression" typically is used in situations, such as in reviewing loan pricing decisions, where there may be a range of potential values (e.g., many possible APRs), whereas a "logistic regression" is better suited to an analysis of situations where the outcome can be only one of two values (e.g., an approval or denial of a loan application).

[28] In determining the level of confidence of statistical significance that would support a finding of discrimination in a particular matter, the OCC would evaluate the overall facts and circumstances and would consult judicial precedent developed under the civil rights laws. As appropriate, the OCC would also consult with the Department of Justice's fair lending enforcement staff.

[29] In addition to a review of loan files, our examinations may also focus on the use of and the variables contained in credit scoring models. *Examination Procedures* at App. B.

such applicants. The fair lending examination procedures provide guidance on how to determine sample sizes and the types of files to compare.[30] For underwriting analyses, examiners are to place special emphasis on identification of marginal applicants. A "marginal applicant" is one who is neither clearly qualified nor clearly unqualified.[31] The review of loan files for marginal applicants assists examiners in determining whether similarly situated borrowers were treated differently and the reasons for different outcomes.

d. Examination Conclusions.

For all banks, when potential unlawful discriminatory results are found, examiners present their findings to bank management for an explanation. If the bank's explanation is inadequate to rebut preliminary examination findings, the findings are documented, and decisions are made on what OCC supervisory or enforcement action should be taken and on whether the matter must or should be referred to the Department of Justice or HUD.[32] This process is discussed in more detail below. Additionally, even if no violation is found, where specific practices or a lack of adequate controls expose the bank to unacceptable risk that a fair lending violation could occur, the OCC will direct bank management to modify its practices or policies to address that risk. Significant problems can be addressed in a variety of ways, including as examination findings and conclusions, or as "Matters Requiring Attention" (MRAs) directed to bank management and boards of directors, in written reports of examination and other written supervisory communications.

[30] *Id.* at pp. 16-17, 37-52 & App. D.
[31] *Examination Procedures* at pp. 40-43 & App. E.
[32] *Examination Procedures,* at pp. 66-68 & App. C.

B. The Enforcement Process

1. Referral and Notification Provisions.

ECOA requires the OCC to refer matters to the Department of Justice "whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit" in violation of ECOA's nondiscrimination provisions.[33] In cases not involving a pattern or practice of violations, the OCC has discretion to make a referral to the Department of Justice when it has reason to believe that discrimination has occurred or when it is unable to obtain compliance with the ECOA's provisions.[34] ECOA also requires the OCC to notify HUD when there is a reason to believe that a creditor has violated ECOA and the Fair Housing Act, but the matter is not referred to the Department of Justice.[35] Further, Executive Order 12892 requires each executive agency to forward to HUD information suggesting a violation of the Fair Housing Act. The information also must be forwarded to the Department of Justice if it indicates a possible pattern or practice of discrimination in violation of the Fair Housing Act.[36] Finally, a 1991 Memorandum of Understanding between HUD and the federal banking agency members of the FFIEC requires the agencies to notify HUD of complaints that appear to allege a violation of the Fair Housing Act.

Generally, banks are provided with a letter containing preliminary findings of discrimination and are given an opportunity to respond in writing. If, after the response is considered, the supervisory office continues to believe that violations of the ECOA or

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[33] 15 U.S.C. § 1691e(g).
[34] *Id.*
[35] *Id.* at § 1691e(k).
[36] Executive Order 12892, Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing § 2-204 (Jan. 17, 1994), *reprinted in* 42 U.S.C.A. § 3608 note (West 1994).

the Fair Housing Act occurred, final determinations are made regarding violations and referrals and notifications to the Department of Justice and HUD.

2. *OCC Fair Lending Enforcement and Referrals.*

a. *In General.*

Since 1993, we have made referrals to the Department of Justice and/or notified HUD of 38 matters under the referral and notification provisions of ECOA. Additionally, pursuant to the 1991 Memorandum of Understanding, the OCC has forwarded to HUD 91 complaints of discrimination filed with our Customer Assistance Group since the fourth quarter of 2002.

Several of our referrals to the Department of Justice have involved allegations of unlawful discriminatory pricing. Indeed, one of our most important enforcement actions, involving discriminatory overages in mortgage lending, was settled well before amendments to HMDA rules made pricing data publicly available.

Our first referral to the Department of Justice resulting in a public consent decree and consent order involved allegations of race discrimination in the pricing of unsecured home improvement loans. This was the first settlement obtained by a federal banking agency to remedy race discrimination in lending. The bank was required to establish a $750,000 compensation fund, implement a customer assistance program to provide information about the bank's products and how to qualify for these products, and implement a matched pair testing program.[37]

Two subsequent cases also involved discrimination in loan pricing. In a 1995 case, the OCC found that a lender was charging higher overages on mortgage loans to

[37] *U.S. v. First National Bank of Vicksburg*, Consent Decree (S.D. Miss. 1994), *available at* http://www.usdoj.gov/crt/housing/documents/vicksburgsettle.htm.

black borrowers than to similarly-situated white borrowers. The Department of Justice entered a settlement agreement with the lender requiring the lender to cap overages, implement a monitoring and compliance system to ensure uniform pricing, and establish a compensation fund of $420,000.[38] In another case originating with an OCC examination, the Department of Justice filed suit claiming that the bank's Native American customers were charged higher interest rates on consumer loans than other customers who were similarly situated. To settle the lawsuit, the bank agreed to (1) create a $175,000 compensation fund; (2) set aside $100,000 to defray certain loan fees for applicants residing in the reservation the bank served; (3) conduct a money management education program for residents of the reservation; and (4) take affirmative steps to increase the pool of qualified Native American applicants for positions at the bank.[39]

A later case involved the OCC's use of statistical techniques to find racial discrimination in the bank's handling of home improvement loan applications. The OCC's analysis concluded that, after controlling for neutral factors, black applicants were at least three times as likely to be rejected for home improvement loans because of the manner in which the bank implemented overrides of its credit scoring system. The Department of Justice's settlement agreement with the bank required a $3 million compensation fund for aggrieved applicants, as well as monitoring and review of underwriting decisions.[40]

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[38] *U.S. v. Huntington Mortgage Co.*, Settlement Agreement (N.D. Ohio 1995), *available at* http://www.usdoj.gov/crt/housing/documents/huntingtonsettle.htm.
[39] *U.S. v. First National Bank of Gordon, Nebraska*, Consent Order (W.D.S.D. 1997), *available at* http://www.usdoj.gov/crt/housing/documents/gordonsettle.htm.
[40] *U.S. v. Deposit Guaranty National Bank*, Settlement Agreement (S.D. Miss. 1999), *available at* http://www.usdoj.gov/crt/housing/documents/dgnbsettle.htm.

The Department of Justice's first public consent decree involving discrimination in credit card lending also originated as an OCC referral. In that case, we found that Spanish speaking applicants were subjected to stricter underwriting standards than English speaking applicants, and that Spanish speaking cardholders were excluded from credit promotions. The bank's settlement included an agreement to establish a $1.5 million compensation fund for aggrieved individuals.[41]

Other OCC referrals to the Department of Justice have concerned violations involving age and marital status discrimination. In a number of such instances, after such a referral, the Department of Justice has declined to take action and has requested that the OCC resolve the matter and provide consumer redress through our own supervisory and enforcement procedures. Depending on the violation, the number of and harm to potential victims, remedial action voluntarily undertaken, and other factors,[42] these cases have been resolved through (1) supervisory action; (2) informal, nonpublic supervisory agreements; or (3) formal, public consent orders. One such example involved evidence of discrimination against non-Asian applicants for mortgage loans. The OCC resolved the case with a consent order that required the bank to pay a civil money penalty and to establish a $400,000 settlement fund to compensate affected applicants.[43]

b. Recent Trends.

The number of instances in which we have found illegal discrimination has declined in recent years. While lending markets have become more complex, and we

[41] *U.S. v. Associates National Bank*, Settlement Agreement (D. Del. 2001), *available at* http://www.usdoj.gov/crt/housing/documents/assocsettle.htm.
[42] *See* 1994 Interagency Fair Lending Policy Statement, 59 Fed. Reg. at p. 18,272 (discussion of factors federal banking agencies will consider in determining appropriate enforcement sanctions and remedial measures).
[43] *In the Matter of: First Central Bank, N.A., Cerritos, California*, Stipulation and Consent Order (Feb. 2, 1999), *available at* http://www.occ.treas.gov/ftp/release/99-23a.txt.

have many challenges to address with the recent collection of HMDA pricing data, we would hope for, and expect, a decline in unlawful lending discrimination in national banks given our supervisory oversight, the fair lending enforcement actions taken by the OCC described above, and the significant steps taken by national banks to monitor and improve their fair lending compliance since that time. Indeed, OCC enforcement actions have sent a strong signal to national banks that their compliance with fair lending laws will be scrutinized and that noncompliance will be subject to enforcement action. In addition, in response to our supervisory and enforcement regime, national banks have adopted a number of measures designed to improve their fair lending compliance. Many banks now use second review programs, testing, and self evaluations to monitor and reduce racial disparities in loan transactions. To mitigate fair lending compliance risks relating to third party brokers, banks have both imposed caps on overall compensation a broker may be paid and limited broker discretion in loan underwriting and pricing decisions, and banks also monitor broker loan channels for pricing disparities. Finally, some banks have developed special procedures to address the risk of inappropriate and potentially unlawful steering, for example, by reviewing applications submitted through a subprime lending channel to determine whether the applicant can qualify for better terms in the prime channel. Concerns about reputation risk and loss of customers, combined with the knowledge that the OCC will scrutinize banks that display elevated levels of fair lending risk and take action where appropriate, act as a powerful incentive to banks to ensure that their lending processes are free of illegal discrimination.

Referral numbers alone can also be misleading, because the OCC also has available a variety of supervisory mechanisms to address problematic practices or weaknesses in controls before such issues lead to potential violations. As previously described, the fair lending supervisory process entails a number of steps, in ascending order of consequence, including our assessment and screening processes to identify banks exhibiting higher fair lending risks, fair lending examinations of those banks, corrective actions to address deficiencies, and finally, where necessary, enforcement actions to address violations of law or deficiencies in bank controls. Formal enforcement actions involving referrals to the Department of Justice generally should be necessary only if the preceding measures have failed to ensure compliance with the fair lending laws. Our goal is to stanch fair lending risk through comprehensive and escalating supervision -- before it develops into illegal practices requiring referrals and enforcement.

When the OCC finds practices or weaknesses that could expose the bank to an unacceptable risk that a fair lending violation could occur, for example, we direct bank management to modify its practices or policies to address that risk. Significant problems can be addressed in a variety of ways, including through as findings and conclusions, or as MRAs of bank management and boards of directors, in written reports of examination. To assist institutions in strengthening fair lending controls, our examiners also may provide supervisory recommendations. These may be contained in examination reports, or in other communications to the institution. These elements of the OCC supervisory process help to prevent bank practices from reaching the point where enforcement action or referrals to the Department of Justice are warranted.

To illustrate, OCC examiners have issued nearly 200 MRAs relating to ECOA and HMDA compliance since 2002. Some of these MRAs concerned practices and weaknesses in internal controls that could present fair lending risk. Other MRAs concerned controls on discretionary pricing, improving documentation of credit decisions, improving and expanding self-monitoring activities, and improving controls relating to brokered loans. Additionally, during this timeframe, the OCC has taken supervisory actions to address violations of HMDA reporting requirements and provisions of ECOA relating to issues such as collection of government monitoring information and adverse action notices. This careful attention to reporting, information collection, and notice obligations further enhances compliance with the fair lending laws by national banks.

3. *New OCC Supervisory Initiatives.*

Notwithstanding past OCC supervisory action and enforcement, we recognize the new challenges we face with the increased complexity of the mortgage lending market, the increased use of brokers, and the surge in the use of subprime and other higher priced lending products for less creditworthy borrowers. It has become more difficult to make a determination whether pricing variations are the result of legitimate nondiscriminatory factors or unlawful discrimination – and we need to adjust and make refinements to our approach to address this challenge.

Although the HMDA pricing data plainly help in this regard, we remain in a relatively early stage of analysis. Because of the time lag in releasing "scrubbed" pricing data, we are still in only the second year of using the results for fair lending supervision, having just recently received the data for the third year, 2006. Thus far, our targeted and focused examinations resulting from the analysis of this data have resulted in no referrals of pattern and practice violations to the Department of Justice: we have found that pricing disparities between classes of borrowers have been explained satisfactorily by differences in borrower creditworthiness and other legitimate factors used by the bank to underwrite the loans and to set prices.

These early determinations are by no means the end of the story, however. We want to make sure that we are doing everything we can to investigate disparities in lending practices, including by refining our fair lending supervisory techniques as we go forward and by targeting emerging risks. In particular, certain practices, such as "steering" applicants to particular products to the exclusion of others and the ability of brokers to price loans, may be contributing to fair lending risks and deserve closer scrutiny.[44]

Therefore, we are taking specific actions to review and improve our fair lending supervision program. In particular, the Comptroller has directed the examiners of our banks with large mortgage operations to establish the following as supervisory objectives for the next fair lending examinations of their banks:

- A targeted review of bank controls and oversight procedures over brokers to address the risks of unlawful pricing disparities in this channel; and
- A targeted review of bank controls and procedures to ensure that applicants are not unlawfully "steered" to high cost loan products.

In addition, we have initiated a review through the FFIEC of the interagency fair lending examination procedures to evaluate whether the procedures need to be refined, based on

[44] The Federal Reserve Board found a much lower incidence of higher-priced lending by lenders in their CRA assessment areas than by the same lenders when they make loans outside of their assessment areas. Although the Board explained that the HMDA data do not contain sufficient information to draw any firm conclusions on this point, it noted that loans extended to borrowers outside an institution's assessment area "may be more likely to come through mortgage brokers." FRB Report on 2005 HMDA Data, at pp. A157-158.

our first two years of experience, to better analyze the factors underlying disparities in loan pricing.

CONCLUSION

In conclusion, this hearing is an important opportunity to examine the fair lending implications of the continued disparities in HMDA reports, and to review how the federal banking and enforcement agencies are following up on these concerns. At the OCC, we are committed to ensuring that the institutions we supervise are not engaged in unlawful discriminatory practices. Moreover, we continue to review and enhance our fair lending supervisory procedures to ensure that they are as effective as possible in detecting unlawful lending discrimination.

I appreciate the opportunity to present the OCC's views on these issues and will be pleased to answer any questions that you might have.

Testimony before the

HOUSE FINANCIAL SERVICES COMMITTEE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

"Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Housing Enforcement"

July 25, 2007

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I. Introduction

Good afternoon. Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to discuss discrimination in mortgage lending and tools for fair lending enforcement. My name is Ginny Hamilton, and I am the Executive Director of the Fair Housing Center of Greater Boston. The Fair Housing Center works to eliminate housing discrimination and promote open communities throughout the greater Boston region. We serve the communities of Norfolk, Suffolk, Essex, Middlesex, and Plymouth counties in Eastern Massachusetts. The Fair Housing Center was founded in 1998 with funds from the Boston Foundation and more than 100 charter members. In 1999, we received a grant from the National Fair Housing Alliance (NFHA), which was in turn funded by HUD's Fair Housing Initiative Program (FHIP), to become a full service fair housing center offering: education and training, community outreach, case advocacy, testing, research, and policy advocacy. Today, we receive FHIP funding independently and remain an active member of the National Fair Housing Alliance.

I am here to speak with you today about the ways in which our organization uses Home Mortgage Disclosure Act (HMDA) data and paired testing to document and address housing discrimination in Boston and eastern Massachusetts. I will also provide recommendations for Congress, Federal Agencies, and Regulators. Discriminatory lending practices are of particular concern in a region characterized by ongoing segregation, exorbitant housing prices and below national average homeownership rates for African American and Latino families. Currently, HMDA data alone are not sufficient to identify discriminatory practices. We have effectively used data, however, to tell us where to look.

II. Residential Segregation and Mortgage Lending Disparities in Greater Boston

Home Mortgage Disclosure Act (HMDA) data have long shown significant racial/ethnic disparities in mortgage lending. Staff and Board members of the Fair Housing Center of Greater Boston have conducted numerous studies analyzing HMDA data, three of which I wish to highlight here. I have included all three reports as appendices to this written testimony.

Since the mid-1990s, the Massachusetts Community and Banking Council (MCBC), a coalition of banks and community groups, has published annual reports documenting disparities in the lending market. Based on HMDA data, the reports document differences by race in the proportion of loans received, denial rates, and lending to neighborhoods with high proportions of residents of color. [1]

The first series of MCBC reports, entitled *Changing Patterns,* has shown consistently lower rates of lending to borrowers of color both in the city of Boston and throughout Greater Boston. Although there have been improvements in some areas over the sixteen years documented by *Changing Patterns*, lending to borrowers of color continues to lag behind lending to whites. In recent years there has been an increase in the ratio of loans denied to borrowers of color compared with white borrowers.

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[1] MCBC was founded by bankers and community groups "to increase the provision of credit and banking services to the low-income and minority communities within the city of Boston." The impetus for its founding was the widely publicized 1989 Federal Reserve study that found large disparities in lending to communities of color. Fair Housing Center Director Ginny Hamilton serves on the board of MCBC and its mortgage lending reports are written by Fair Housing Center Board member Jim Campen.

The most recent report in the series, *Changing Pattern XIII,* shows the following: within 101 municipalities in metro Boston[2], half of home purchase loans made to African American and Latino buyers between 2003 and 2005 were concentrated in just three cities (Boston, Lynn, and Revere.) In contrast, only a fifth of loans made to members of other racial/ethnic groups were made in those municipalities. In particular:

- **Lending to Black borrowers in the Boston metro region was highly concentrated in a small number of municipalities. Boston alone received nearly one-half (46.0%) of the total loans to Blacks, while Randolph and Lynn received another one-sixth (17.2%) of the total.** (Boston received 18.0% of total loans to all borrowers in the region, while Randolph and Lynn received just 4.8% of total loans.) Eight municipalities – Boston, Lynn, Malden, Milton, Medford, Randolph, Stoughton, and Everett – each received over 100 loans to Blacks during the three-year period; these eight municipalities accounted for 77.4% of loans to Blacks in the Boston metro region, while they received just 29.0% of total loans.
- **In eight municipalities – Carlisle, Gloucester, Hamilton, Manchester-by-the-Sea, Nahant, Sherborn, Stow, and Wenham – not a single home-purchase loan was made to a Black borrower during the three-year period.** In 54 of the 101 Boston Metro municipalities Blacks received 1.0% or less of total loans, and in 23 additional municipalities the Black loan shares were between 1.0% and 2.0%.
- **Lending to Latino borrowers in the Boston metro Region was highly concentrated in a small number of municipalities, although less concentrated than lending to Blacks. Just two cities – Boston and Lynn – received 37.7% of all loans to Latinos** (they received 21.5% of total loans to all borrowers). Six municipalities – Boston, Chelsea, Everett, Framingham, Lynn, and Revere – each received over 400 loans to Latinos during the three-year period; these six municipalities accounted for 63.0% of all loans to Latinos, while receiving just 27.6% of total loans.
- **In three municipalities – Essex, Hamilton, and Nahant – not a single home-purchase loan was made to a Latino borrower during the three-year period.** In 25 of the 101 municipalities in the Boston metro region Latinos received 1.0% or less of total loans, and in 29 additional municipalities the Latino loan shares were between 1.0% and 2.0%.

The second series of MCBC studies, *Borrowing Trouble (I-VII)*, looks specifically at the rapidly growing subprime lending market. Again, the studies document that a disproportionately large percentage of these High APR Loans (referred to as HALs) go to African Americans and Latinos, even to those with higher incomes. Moreover, the pattern spilled over into neighborhoods, with subprime lending rising in neighborhoods containing larger populations of color and the same trends occurring in suburban towns and satellite cities as in the city of Boston itself.

- Black and Latino borrowers in Boston, in Greater Boston, and statewide were much more likely to receive HALs than were their white or Asian counterparts. **In Greater Boston, the HAL share for Blacks was 3.8 times greater than the HAL share for whites in the case of *home-purchase* lending (57.1% vs. 14.9%), and 3.0 times greater for *refinance***

[2] In *Changing Patterns*, the Boston metro region is defined as the 101 municipalities in the Metropolitan Area Planning Council region.

lending (31.3% vs. 10.4%), while the corresponding Latino/white disparity ratios were 3.9 and 2.7.

- When borrowers are grouped by both race/ethnicity and income level, the HAL loan shares for Blacks and Latinos are always substantially higher than the HAL shares for white borrowers in the same income category. Furthermore, the disparities in HAL shares tend to increase as the income level increases. **In Boston in 2005, highest-income Blacks received 71.1% of their *home-purchase* loans in the form of HALs and the HAL share for highest-income Latinos was 56.2%, while the HAL loan share was 9.4% for highest-income whites.** That is, for *home-purchase* loans, the HAL shares for highest-income Blacks and Latinos were, respectively, 7.6 times and 6.0 times greater than the HAL share for highest-income whites. In Boston in 2005, highest-income borrowers were those with incomes of over $152,000.
- The shares of total loans that were accounted for by high-APR loans varied dramatically among Boston's major neighborhoods. For *home-purchase* loans, the 58.0% HAL share in Mattapan was twelve times greater than the 4.7% share in Charlestown. For *refinance* loans, the 36.8% HAL share in Roxbury was thirteen times greater than the 2.8% HAL share in the Back Bay/Beacon Hill neighborhood. **The four Boston neighborhoods with the highest percentages of minority residents – Mattapan, Roxbury, Dorchester, and Hyde Park – also had the four highest HAL shares for both *home-purchase* and *refinance* lending, ranging from 27.2% to 58.0%; meanwhile, in the four neighborhoods with fewer than 25% minority residents – Back Bay/Beacon Hill, South Boston, West Roxbury, and Charlestown – the HAL shares were between 2.8% and 14.6%.**
- Among the 101 communities in Greater Boston, **the five communities with the highest shares of HALs in 2005 had an average of 21.5% Black plus Latino households and an average MFI of $47,022, while the five communities with the lowest HAL shares had an average of 2.5% Black plus Latino households and an average MFI of $135,194.** (The high HAL-share communities are Everett, Revere, Chelsea, Lynn, and Randolph; the low HAL-share communities are Carlisle, Needham, Dover, Weston, and Lincoln.)
- Considering the seven largest Massachusetts cities outside Greater Boston, **the totals of the HAL shares for home-purchase and refinance loans in Lawrence (HAL shares of 67.5% for home-purchase loans and 39.0% for refinance loans), Springfield (54.0% and 39.7%), and Brockton (58.5% and 33.1%) were all higher than the total HAL shares in any community in Greater Boston.** Lawrence, Springfield, and Brockton rank first, third, and fifth among Massachusetts communities in percentage of Black plus Latino households (Chelsea and Boston rank second and fourth).
- **The three biggest overall lenders in Boston** (the only three lenders with over nine hundred total loans in the city) **each had substantial disparity ratios for their high-APR lending. The Black/white disparity ratios were 3.5 at Countrywide** (30.6% vs. 8.8%), **6.1 at Wells Fargo** (26.4% vs. 4.4%), **and 3.8 at Washington Mutual/Long Beach** (36.6% vs. 9.7%). **The Latino/white disparity ratios at these same three lenders were 1.2, 4.3, and 5.4, respectively.**

More than Money, the third study I want to highlight, shows that **racial disparities in mortgage lending cannot be explained by affordability alone.** In 2003, Fair Housing Center Director David Harris co-authored a study with Nancy McArdle of the Harvard Civil Rights Project to test the common explanation that people of color simply cannot afford to buy homes in our suburbs. The paper analyzed census data on homeownership and HMDA data on recent mortgages to determine the extent to which the region's ongoing segregation can be explained by a disparity in the values/prices of homes people of color own and those owned by whites. **In 80 percent of cities and towns, the number of African American and Latino homebuyers was less than half what would be predicted based on affordability alone.**

While there can be no denying that high housing costs are limiting options for many residents, this analysis of HMDA data shows that affordability alone does not explain these discrepancies. Most strikingly, African Americans and Latinos, who could afford to buy in a wide range of more outlying suburban communities, are concentrating in Boston, certain inner suburbs, and certain satellite cities, often the same places experiencing the largest declines in white homeowners. The study found that this simple notion of "affordability" does not explain the ongoing and frequently documented patterns of racial concentration and segregation.

The data presented in these studies are strongly suggestive of lending *discrimination*, but the information currently included in HMDA data is not sufficient to prove that discrimination contributes to the observed disparities. This is why the Fair Housing Center conducts targeted lending discrimination testing (described below) to root out actual discrimination. Lenders regularly call attention to the limited nature of the information included in HMDA data which lacks, for example, such relevant details as the credit history/score of the borrower, and the size of the loan in relationship to the price/value of the home (loan-to-value ratio or LTV). We agree with the industry on the value of including such additional information.

This leads to my <u>first set of recommendations</u>: enhanced HMDA data.

- HMDA data collection should be enhanced to include the identification of loans processed through mortgage brokers, as well as to defining separate high cost benchmarks for fixed rate and adjustable rate mortgages, loan-to-value ratio; factors used to measure borrower credit worthiness (such as credit score), and the total fees as a separate item.
- Federal regulators should work with civil rights and consumer organizations to determine new HMDA data classifications that reflect the complexity of brokered loans. These loans often involve counter-offers which are technically a rejection but which may, in some cases represent a better product or terms for the consumer.

III. Statistical Evidence of Lending Discrimination

These changes to HMDA data would aid efforts to identify potential instances of lending discrimination. However, it is not necessary to await such data in order to conclude that lending discrimination occurs. Indeed, a study published by the Federal Reserve Bank of Boston in 1992 showed that the serious disparities between the loan denial rates of borrowers of color and white borrowers in Greater Boston reflected racial discrimination by lenders as well as other factors.[3]

In May 2006, the Center for Responsible Lending released *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*. The authors matched records from HMDA data with records from a large proprietary database of subprime loans to so that the info available for each borrower included race/ethnicity; credit score; loan-to-value ratio; existence of

[3] Federal Reserve Bank of Boston *Mortgage Lending in Boston: Interpreting HMDA Data* originally published in 1992, revised version in American Economic Review in 1996

prepayment penalties; and whether the loan was fixed- or adjustable-rate. Both simple cross tabulation and more sophisticated multiple regression analysis showed that, other things equal, Black and Latino borrowers were substantially more likely to receive higher-cost loans than white borrowers.[4]

Also in 2006, then-NY Attorney General Eliot Spitzer's settlement with Countrywide Home Loans indicates the Attorney General found evidence of higher prime loan pricing for African Americans and Latinos than for white borrowers who were equally risky. This agreement is found on line at:
www.oag.state.ny.us/press/2006/dec/Countrywide%20Assurance%20Final%20Signed%20PDF.pdf [The specific finding referenced here is paragraph #2.4 on page 3.]

IV. Testing for Discrimination

Findings from HMDA data, however strong and however suggestive, are regularly dismissed as not conclusive proof of racial/ethnic discrimination. More complex statistical evidence, however carefully found, is often based on statistical techniques too complicated to be readily understood by the average person, and the industry has never failed to find experts who will, for a fee, dispute the validity of any conclusion that it didn't like. Nevertheless, there is one type of evidence of discrimination that is clear and convincing – and that is paired testing.

Testing is a controlled method of measuring and documenting variations in the quality, quantity and content of information and services offered or given to various home seekers by housing providers. Quite simply, a test is designed to reveal differences in treatment and to isolate the causes of these differences by controlling for the desired factor. HUD's regulations to the federal Fair Housing Act read: "A person who receives the inaccurate or untrue information need not be an actual seeker of housing in order to be the victim of a discriminatory housing practice…." (24 CFR Part 14 et al. Implementation of the Fair Housing Amendments Act of 1988; Final Rule. Section 100.80.) The U.S. Supreme Court has also recognized testing as a tool to uncover housing discrimination. See *Havens Realty Corp v. Coleman*, 455 U.S. 363, 373-374 (1982).

A proven means for discovering the presence of discrimination, testing has become commonly accepted practice in several arenas. For fair housing enforcement purposes, the Department of Justice has its own testing program and the Department of Housing and Urban Development approves testing by fair housing organizations nationwide. Also, many corporations use "shopping services" to test a competitor's products as well as the performance of their own employees.

Testing is carried out by qualified fair housing organizations such as ours, both to provide systematic assessment of discrimination in the market and to investigate individual claims of discrimination. Fair housing organizations have a non-profit 501(c)3 status, so employees do not receive increases in salary or gifts as a result of any compensation that a victim of discrimination might receive after a settlement. Any claims or compensation for an occupant or applicant who has been the victim of discrimination goes to the complainant. Fair housing centers may also receive funds through a settlement or lawsuit, which is most often used to further fair housing by educating home seekers and housing providers about their rights and responsibilities under the law.

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[4] Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages. Center for Responsible Lending. Debbie Gruenstien bocian, Keith S. Ernst, and Wei Li. May 31, 2006. www.responsiblelending.org

V. Evidence of Lending Discrimination in Greater Boston

Since 2001, testing conducted by the Fair Housing Center of Greater Boston has shown that African Americans and Latinos experience discrimination in approximately half of their attempts to rent, purchase, or finance homes in the greater Boston region. Our testing data adds to a large body of evidence of housing discrimination from paired testing of providers of rental housing, from paired testing of real estate brokers who deal with potential home buyers, and from paired testing of mortgage lenders by seekers of home loans. (The amount of evidence is progressively smaller in each case because carrying out the tests is progressively more complex and expensive.)

Several national studies have presented evidence of racial and ethnic discrimination from paired testing of mortgage lenders. In the mid-1990s, NFHA conducted fair lending investigations that revealed discrimination based on race or national origin in two-thirds of almost 600 tests conducted in eight cities, including Boston. In two-thirds of the tests, whites were favored over African Americans and Latinos; in only 3 percent of the tests, African American and Latino testers were favored over white testers. In all cases, the African American and Latino testers were better qualified for the loans than their white counterparts.

Two more recent studies used testing to look at discriminatory treatment in the pre-application phase, and discriminatory behavior by mortgage brokers. The first was released in April 2002, the Urban Institute, *All Other Things Being Equal: A Paired Testing Study of Mortgage Lending Institutions*. The second, *Fair Lending Disparities: Stubborn and Persistent* was released in May 2006 by the National Community Reinvestment Coalition.

In May 2006, the Fair Housing Center of Greater Boston released our own mortgage testing audit report, *The Gap Persists: A Report on Racial and Ethnic Discrimination in the Greater Boston Home Mortgage Lending Market.* The rest of this section is a summary of that report.

During the four months from October 2005 to January 2006, the Fair Housing Center conducted an investigation to determine the extent and nature of discrimination by mortgage lenders in Greater Boston. The Fair Housing Center used trained volunteers to call and visit banks and mortgage offices and to report in detail on their experiences. Overall, the Fair Housing Center found differences in treatment which disadvantaged the homebuyer of color in nine of the twenty matched paired tests conducted, or 45 percent. In seven of these tests the differences in treatment were clearly large enough to form the basis for legal action, while the evidence in the remaining two tests may or may not have risen to that level. The chart below breaks down these test results by several different variables.

	Tests Conducted	Tests Showing Evidence of Discrimination	Percent of Tests that Show Evidence of Discrimination
All tests	20	9	45%
Good Credit	10	4	40%
Mediocre Credit	10	5	50%

	Tests Conducted	Tests Showing Evidence of Discrimination	Percent of Tests that Show Evidence of Discrimination
African American/white pair	10	5	50%
Asian/white pair	4	2	50%
Latino/white pair	5	2	40%
Caribbean/white pair	1	0	0%

In all tests, the tester of color was better qualified than the white tester. Four of the tests with differences in treatment were conducted by pairs of testers with good credit scores, and five were done by pairs with mediocre credit scores. Of the ten tests pairing white and African American testers, there were five test pairs where the African American tester received disadvantageous treatment. Of the four Asian tests pairing with white tester, two showed evidence of discrimination. There were five tests pairing Latino and white testers, and in two the lender advantaged the white tester over the Latino tester. The one test pairing a Caribbean and white tester did not show evidence of discrimination. Summaries of each of the nine tests showing differences are provided in the full report.

Selection of Sites

Fair Housing Center staff worked with staff of the Massachusetts Affordable Housing Alliance (MAHA[5]) to discuss selection of sites and test methodology. MAHA provided the Fair Housing Center with the names of the 25 mortgage lenders that do the highest volume of lending in Boston. To this list, the Fair Housing Center added several companies who do a high volume of business in greater Boston and are reputed to have very low customer satisfaction rates. From this combined list, the Fair Housing Center tested ten banks and ten mortgage lending companies with offices located throughout Greater Boston.

Test Design

Fair Housing Center staff members provide all testers with HUD-approved standardized training that emphasizes the role of testers as objective fact finders. The Fair Housing Center paired testers and assigned both members of the pair near-identical incomes, credit ratings, and housing search locations, so that the major difference between the paired testers was the race or ethnicity of the loan seeker. Testers of color were assigned slightly higher credit scores and incomes, and slightly lower debt compared to their white counterparts, such that in a discrimination-free environment, the tester of color would be slightly better qualified for the home loan.

From October 2005 to January 2006, the Fair Housing Center conducted twenty matched pair site visit tests for discrimination against African American, Latino, Asian, Caribbean loan seekers. The audit was designed for each tester to have similar experiences, with every effort to

[5] The Massachusetts Affordable Housing Alliance (MAHA) is a statewide nonprofit group that works to encourage local and state government and businesses to invest more money in affordable housing. Known for their award winning homebuyer classes for consumers, MAHA also conducts research and organizes tenants and homeowners in support of affordable housing. www.mahahome.org

have testers contact the same person. During each test, the testers requested that the mortgage provider give them any information or quotes available but were instructed not to pursue the full application process. All testers inquired about a $475,000 mortgage with $25,000 down payment.

In MAHA's experience with first time homebuyers, homebuyers of color with mediocre credit are often turned away by mortgage providers, while the companies attempt to work with white homebuyers with similar credit to find ways to provide the loans. The Fair Housing Center sought to gather evidence as to whether such differences are occurring and therefore decided to include two levels of credit ratings. Ten pairs of testers had good credit, with assigned credit scores of approximately 750. Ten pairs of testers had mediocre credit, with assigned credit scores of approximately 650.

Test Implications

The results of this investigation are disturbing and reveal inconsistencies in the treatment of and services provided to testers of color when compared directly to white testers, including discouraging statements, higher quotes, or worse treatment of the tester of color or encouraging statements, lower quotes, or better treatment for the white tester. These differences serve to disadvantage loan seekers of color and advantage white loan seekers. The testing process directly reflects reality insofar as neither testers of color nor white testers were aware of their relative (dis)advantages. As in previous Fair Housing Center audits, no individuals were targets of outright hostility or subjected to overt discrimination.

A troubling finding of this investigation is that discriminatory behavior, often subtle, takes place from the beginning of the lending process. All the tests were pre-application phase, and loan seekers of color were still disadvantaged in 45 percent of the tests. There is reason to believe, from other sources, that discrimination also happens at later stages of securing a mortgage loan. Common reports of "bait and switch" tactics suggest that borrowers who initially receive good treatment and attractive terms from the lenders will receive different terms at or near their closing. According to MAHA, many of their clients, most of whom are African American, experience just such treatment toward the end of the loan process.

Our investigation shows that lenders frequently give white loan seekers more information than loan seekers of color, creating a gap between white people's financial literacy and that of people of color. **In seven of the twenty tests conducted in this investigation, the white loan seeker received substantially more information from the lender** about different types of loans, either verbally or in writing (and often both), than the loan seeker of color, and not once did the person of color receive more information than his or her white counterpart. When a lender takes the time to describe the advantages and disadvantages of different loans, the loan seeker becomes an educated consumer. That loan seeker is now equipped with knowledge that will allow him or her to choose the right loan type and negotiate with lenders in the future. In contrast, when a lender simply tells a loan seeker "this is the loan for you, and it costs this much," the loan seeker has not gained any insight into how to choose the right loan or get a good interest rate. **Our investigation shows that it is not just the lender's style that determines how much information a home seeker receives, in too many cases it is the color of the loan seeker's skin.**

In four out of twenty tests, the lender contacted the white tester after their meeting to follow up, but did not contact the tester of color. Follow up comes in different forms, including additional information about loan products, a suggestion to pursue a loan with that lender, or a simple thank you card for the meeting. All of these sorts of contact send a message that the lender wants the loan seeker as a client. No lender in our study followed up with the tester of color and not with the white tester.

In five out of twenty tests, the white tester was offered a discount on closing costs which was not offered to the tester of color, or was quoted a substantially lower closing cost than the tester of color. The differences ranged from $500 to $3,600. We cannot assume that these preliminary numbers accurately reflect the final closing costs had our testers truly applied for a loan. However, at the first stages of shopping for a mortgage, quotes with high closing costs can discourage home seekers of color from pursuing home ownership at all. And lenders know that closing costs are a big factor in consumers' choice of lenders; that is why they offer specials like certificates for money off closing fees. If such specials are made available to white loan seekers but not loan seekers of color, the lender is pursuing white customers while allowing non-white potential customers to walk away.

One of the most consistent aspects of all these tests was that there was not one single instance in which a tester of color was subjected to overt discrimination. This simple fact underscores the need for and benefit of testing as a means of gauging discrimination in general, but particularly in a lending industry characterized by such large differences in outcomes.

My <u>second set of recommendations</u> concerns the necessity of lending testing in uncovering discrimination and enforcing fair lending laws and regulations.

- Federal government agencies and bank regulators should make much more aggressive and extensive use of paired testing in their own enforcement activities and investigations by contracting and working directly with qualified fair housing enforcement organizations.
- Federal government agencies and bank regulators should also support qualified fair housing organizations in carrying out greatly expanded paired testing.
- Congress should increase funding for the Fair Housing Initiatives Program (FHIP) to expanded lending testing by qualified fair housing organizations.
- Congress and federal agencies should provide an exemption to qualified fair housing organizations to allow mortgage lending testing beyond the pre-application phase of the mortgage lending process to enforce civil rights and anti-predatory lending laws. As mentioned above, discrimination occurs in every step of the loan process, but private groups are not currently able to test beyond pre-application because of form restrictions.

V. Federal Regulators Do Not Sufficiently Oversee and Enforce Fair Lending Laws

Private lawsuits have historically been important to the effort to eliminate lending discrimination. Currently, most fair lending cases are brought by private fair housing organizations and individual attorneys. While these private efforts are very important, the full engagement of the responsible federal government agencies is an essential component of any serious effort to combat lending discrimination in all of its many, evolving forms.

Private organizations do not have the resources needed to undertake investigation, analysis and litigation of fair lending violations on a routine basis. This requires review and analysis of a wide range of documents related to marketing practices, underwriting and loan servicing policies, confidential personal data from actual loan files, and a variety of other information that lenders deem proprietary. While fair housing organizations provide a vital service in conducting testing and research activities to uncover fair lending violations, for both policy and practical reasons, the federal government must be an integral partner in fair lending enforcement efforts.

Lending disparities occur not only between individuals, but between neighborhoods and communities divided along racial lines. African American and Latino that have traditionally not had access to main stream and prime lenders. One mechanism by which racially disparate outcomes are generated is by branch location and/or marketing efforts that lead a corporation's Black and Latino borrowers to obtain loans primarily from a high-cost subprime affiliate while its white borrowers obtain their loans primarily from a low-cost prime lending affiliate. Traditional fair lending exams might determine that each of the two affiliates treats all its applicants fairly, even though the overall corporation's lending is highly unfair.

From a fair lending perspective, when examining a lending institution that makes both prime and subprime loans, it is critical to review the institution's marketing and application procedures to ensure that all applicants have equal access to all reasonable products for which they qualify. It is also critical to look at the lenders distribution system. Does the lender have retail brick and mortar operations in predominately white, suburban communities while not having brick and mortar retail operations in predominately African American and Latino neighborhoods? Does the lender, when considering its entire books of business, rely on mortgage brokers as its primary originators in predominately African American and Latino neighborhoods?

If the government fails to pursue such cases or does not engage in a competent effort to uncover lending discrimination by the lenders under its authority, then most lending discrimination will go unchecked. Indeed for the entire history of our country, it has. Lack of forceful federal enforcement actually provides a form of safe harbor for those in the industry engaging in discriminatory practices.

The federal agencies that regulate insured depository institutions, particularly the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Federal Reserve Board (Fed), have the authority to conduct an effective process for fair lending examinations; however, their record of enforcement falls short of the mark and has not been effective at eliminating discrimination in the mortgage market. Disclosure is a valuable tool for the evaluation of lending practices, but it cannot replace forceful and effective enforcement activities undertaken by federal agencies. Financial regulatory agencies have referred some lending discrimination cases to the Department of Justice for enforcement actions; however, they are few in number.

Currently, no federal agency regulates independent mortgage companies for fair lending compliance. Yet, as testing shows, discrimination is as at least as common in these institutions as in regulated banks. To help alleviate the problems in the subprime market, the Federal Reserve should exercise its discretion as the agency with rule-making authority under the Home Ownership and Equity Protection Act (HOEPA) to limit the use of subprime exploding ARM mortgages. HOEPA provides broad authority to the Federal Reserve to prohibit unfair or deceptive mortgage lending practices and to address abusive refinancing practices on all mortgage loans, not only high-cost loans; [6] however, the Federal Reserve has never exercised

[6] (l) DISCRETIONARY REGULATORY AUTHORITY OF BOARD.--

this authority. By issuing ***a regulation under HOEPA, the Federal Reserve would ensure that all subprime mortgage loans in the country were subject to the same rules.***

HUD, as the lead enforcement agency under the Fair Housing Act and the administrator of the Federal Housing Administration, has the authority to initiate investigations and enforcement actions. However, it has undertaken very little fair lending enforcement activity. Assistant Secretary Kim Kendrick has made a commitment to improving enforcement efforts at HUD and to reinvigorating the Secretary-initiated complaint process. HUD's recently established fair lending enforcement office is a step in the right direction. It is my understanding that the New England Regional office has been unofficially playing this role, handing fair lending cases from around the country. This new program should be appropriately resourced and compelled to proactively investigate fair lending violations.

During the 1990s, the Department of Justice was a leader among government agencies in fair lending enforcement. These DOJ investigations set in operation a process by which both HUD and the financial regulatory agencies could refer pattern and practice cases to DOJ for investigation and litigation. These cases set out legal strategies and formats for investigation and litigation in a wide range of lending issues from redlining to retail and wholesale pricing. Historically, the decade of the 1990s can be seen as the high point in federal enforcement efforts. There is little sign of enforcement activity in this decade.

The Federal Trade Commission has authority over non-regulated lenders under the Equal Credit Opportunity Act (ECOA), but it has pursued almost no lending discrimination cases, although the FTC had an enforcement plan as far back as 1978 (See Discrimination in Real Estate Finance: The Role of the FTC Enforcement – A Report to the Federal Trade Commission, Pottinger and Company, 1978).

It should be clear by now that racial/ethnic discrimination in mortgage lending exists and is a serious problem. If and when regulators make a serious attempt to find racial/ethnic discrimination in lending, they can and will find it, as at the Boston Fed more than a decade ago and at the New York Attorney General's office more recently. We at the Fair Housing Center, and my colleagues at the National Fair Housing Alliance, believe it is shameful that the four bank regulators (OCC, OTS, FDIC, and the Fed) and the other regulatory agencies charged with enforcing the nation's fair housing laws (HUD, DOJ, FTC) have made such minimal and half-hearted efforts to identify and reduce racial/ethnic discrimination in mortgage lending.

These leads to my third set of recommendations: The federal agencies and regulators tasked with fair housing and fair lending oversight must expand their fair lending enforcement efforts. These agencies need assistance from both Congress, in the form of appropriations to fund these initiatives such as HUD's newly mortgage discrimination investigation unit, and from the Administration, in the form of political will.

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(2) PROHIBITIONS.--The Board, by regulation or order, shall prohibit acts or practices in connection with--

(A) mortgage loans that the Board finds to be unfair, deceptive, or designed to evade the provisions of this section; and

(B) refinancing of mortgage loans that the Board finds to be associated with abusive lending practices, or that are otherwise not in the interest of the borrower." 15 USC Section 1639(l)(2).

VI. Recommendations

Congress, the Administration, and federal agencies must use their authority to undertake much stronger fair lending activities, including investigations and enforcement. The following are recommendations that Congress should implement and/or oversee.

Fair Housing: Increased Appropriations and New Legislation

- Congress should allocate at least $26 million to HUD's Fair Housing Initiatives Program in order to facilitate increased education and enforcement efforts on the part of local fair housing organizations. Additional funding should be provided for for qualified fair housing organizations to conduct activities specifically addressing fair lending issues.
- Congress should support and pass the Housing Fairness Act of 2007 (H.R. 2926) that contains the following provisions: doubling the authorization level for HUD's Fair Housing Initiatives Program to $52 million; a commitment of at least $20 million annually for fair lending and fair housing enforcement testing and actions; a commitment of at least $5 million annually to fund studies of the effects of housing segregation on our nation's communities. Representative Al Green and 44 other members of Congress currently co-sponsor this bill. The companion bill S. 1733 has been proposed in the Senate.

Enhance HMDA Data

- HMDA data collection should be enhanced to include the identification of loans processed through mortgage brokers, as well as to defining separate high cost benchmarks for fixed rate and adjustable rate mortgages, loan-to-value ratio; factors used to measure borrower credit worthiness (such as credit score), and the total fees as a separate item.
- Federal regulators should work with civil rights and consumer organizations to determine new HMDA data classifications that reflect the complexity of brokered loans. These loans often involve counter-offers which are technically a rejection but which may, in some cases represent a better product or terms for the consumer.

Aggressive Fair Lending Oversight and Enforcement

- Congress should require federal government agencies, including HUD, DOJ, and the FTC, to undertake more aggressive, effective and expansive fair lending enforcement activities. These agencies should consult with experts in fair lending enforcement organizations so that the federal examination and enforcement programs reflect best practices and state of the art investigation techniques and litigation strategies.
- Congress should require that HUD improve the quality of its training programs to increase the capacity of its investigators and Fair Housing Assistance Program (FHAP) investigators to investigate lending complaints.
- Congress should require that federal agencies that regulate insured depository institutions, particularly the OCC, the FDIC, the OTS, and the Fed, use their authority to undertake stronger oversight and enforcement activities to eliminate discrimination from the mortgage market. They should also re-examine their use of HMDA data to assure maximum coverage

of potential fair lending violations. Any cases that regulators resolve with lenders on behalf of a few consumers should also be referred to DOJ for a pattern and practice investigation.

- Congress should ask the Fed for a status report on the 270 institutions that it flagged in 2005 and 2006 for additional investigation because of their pricing data and other issues.
- Congress should move to regulate all financial institutions active in lending. To fill the vacuum of fair lending enforcement activity for non-depository institutions, the Fed should use its authority to ensure that these institutions are in compliance with the fair lending laws. If this authority is lacking, Congress should grant the needed authority.

Strengthening Regulations

- Regulators need to examine lending corporations as a whole, reviewing data from retail and wholesale divisions as well as prime and subprime divisions together. Traditional fair lending exams might determine that each of the two affiliates treats all its applicants fairly, even though the overall corporation's lending is highly unfair.
- Regulators should contract with private, qualified fair housing organizations to conduct comprehensive testing programs.
- Regulators need to run regression analyses on lender portfolios looking at origination, pricing, point of origination, costs, pre-payment penalty, and yield spread premium issues stratified by key protected class characteristics. Regulators are in a unique position to do this as they have access to full records and data.

Expand Sponsorship and Use of Paired Testing in Fair Lending Enforcement

- Federal government agencies and bank regulators should make much more aggressive and extensive use of paired testing in their own enforcement activities and investigations by contracting and working directly with qualified fair housing enforcement organizations.
- Federal government agencies and bank regulators should also support qualified fair housing organizations in carrying out greatly expanded paired testing.
- Congress and federal agencies should provide an exemption to qualified fair housing organizations to allow mortgage lending testing beyond the pre-application phase of the mortgage lending process to enforce civil rights and anti-predatory lending laws. As mentioned above, discrimination occurs in every step of the loan process, but private groups are not currently able to test beyond pre-application because of form restrictions.

Thank you once again for the opportunity to testify before this Committee. I am available to answer any questions and assist in any way that we can to assure that this Committee, Congress and the government as a whole fulfill their duties to enforce fair lending nationwide.

Attachments to this testimony submitted as electronic files

The Gap Persists: Racial and Ethnic Discrimination in the Greater Boston Home Mortgage Lending Market. The Fair Housing Center of Greater Boston, May 2006. www.bostonfairhousing.org/publications.htm

More than Money: The Spatial Mismatch Between Where Homeowners of Color in Metro Boston Can Afford to Live and Where They Actually Reside, by David J. Harris of the Fair Housing Center of Greater Boston and Nancy McArdle of the Civil Rights Project of Harvard University. January 2004. www.bostonfairhousing.org/publications.htm

Changing Patterns XVIII: Mortgage Lending to Traditionally Underserved Borrowers & Neighborhoods in Greater Boston, 1990 – 2005 by Jim Campen for the Massachusetts Community and Banking Council, November 2006. www.masscommunityandbanking.org

Borrowing Trouble VII: High-Cost Mortgage Lending in Greater Boston, 2005 by Jim Campen for the Massachusetts Community and Banking Council, January 2007. www.masscommunityandbanking.org

National Fair Housing Alliance, *The Crisis of Housing Segregation: 2007 Fair Housing Trends Report,* April 30, 2007

AFSA
American Financial Services Association

Testimony of Bill Himpler for the American Financial Services Association

Before

The Subcommittee on Oversight and Investigations of
The House of Representatives Financial Services Committee

For the Hearing Entitled
Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement

July 25, 2007

Good Afternoon, Chairman Watt, Ranking Member Miller and Members of the Subcommittee. My name is Bill Himpler and I am Executive Vice President for Federal Affairs at the American Financial Services Association located here in Washington, DC. AFSA's 350 member companies include consumer and commercial finance companies, "captive" auto finance companies, credit card issuers, mortgage lenders, industrial banks and other financial service firms that lend to consumers and small businesses.

I commend you, Mr. Chairman, and your colleagues for holding this hearing today on how Home Mortgage Disclosure Act (HMDA) is being used to meet the objectives of our country's fair lending laws. We believe recent events have shown that HMDA is already working as intended. While other laws – such as the Equal Credit Opportunity Act -- provide a means for enforcement action against lending discrimination, HMDA serves as an "early warning system" by identifying lending patterns that warrant additional investigation.

The Importance of the Subprime Market

At the outset, let me state that the mortgage sector -- indeed, the entire financial services industry -- stands shoulder to shoulder with you in its commitment to the principle that any disparity in lending that is based on race or ethnicity is unacceptable, period. To that end, AFSA believes the industry has a very good story to tell.

Responding to challenges from federal, state and local governments to address redlining concerns in the 1960s and 1970s, our companies worked with Congress, regulators and others to bring access to credit into every neighborhood. But we haven't stopped there.

Together, over the last twenty years, the industry has worked with policymakers and consumer groups as we developed and embraced new technology that has allowed us to better serve more consumers. Prior to the 1990s, a consumer with blemishes on his or her credit record was essentially shut out from the dream of home ownership. No one can argue that is the case today.

In response to calls for increased minority home ownership, AFSA member companies have played a critical role in the nation's record level of home ownership, with the greatest growth seen among minorities. Since 2002, 2.8 million families became first-time home owners.[1]

At the same time, the mortgage industry is working with community partners to meet a new challenge: rising defaults and foreclosures. As part of my testimony, I have attached a summary of initiatives undertaken by AFSA's member companies to help borrowers avoid losing their homes.

While all of us should be concerned about foreclosures, we must not lose sight of the fact that more than four out of five subprime borrowers are making timely payments and

[1] John M. Robbins, Chairman of the Mortgage Bankers Association, speech to the National Press Club. Washington, DC. May 22, 2007.

managing their credit effectively.[2] As we discuss the HMDA data and ways to make our credit system even better, we must be mindful how any changes might affect liquidity. More importantly, we cannot cripple the industry's ability to provide manageable borrowing options for borrowers facing reset or the possibility of foreclosure.

Results from Analysis of the 2004 HMDA Data

The analysis of the 2004 HMDA data by Federal Reserve Board authors Robert Avery, Glenn Canner and Robert Cook was published in their September, 2005 Federal Reserve Bulletin article.[3] They focused on differences across racial groups in 1) loan rejection rates, 2) incidence of higher-priced (reportable) loans, and 3) the average price paid by those who receive higher-priced (reportable) loans.

The 2004 data (unadjusted for risk characteristics associated with the borrower or loan) show that African- American and Hispanic borrowers have a higher incidence of higher priced loans relative to non-Hispanic whites (and Asians). In the category of purchase money first liens, 32.5 percent of African American borrowers received higher-priced loans, compared to 20.3 percent of Hispanic borrowers and 8.7 percent of non-Hispanic white borrowers.

Yet, the authors are clear that comparing raw incidence data can provide an incomplete and misleading picture because they don't account for differences in the risk of either borrowers or loans. While the HMDA data are limited, they do contain information on borrower income, location of the property, property type and the identity of the lender. After adjusting for those factors, contained in the HMDA reports, the percentages of purchase money first liens made as "higher priced" fall to 15.7 percent for African American borrowers and 11.5 percent for Hispanic borrowers, as compared to 8.7 percent for non-Hispanic white borrowers.

Regarding the remaining incidence differential, the authors remind the reader that "We emphasize that the Federal Reserve's statistical analysis system is only a screening tool. The HMDA data alone, no matter how much they are manipulated, cannot be used to conclude whether a particular applicant was treated adversely . . . The data reveal little about an individual's financial circumstances [e.g., borrower risk score, total debt, loan-to-value ratio, documentation and stability of income] and nothing about the condition or value of the property offered as collateral."[4]

Let me be perfectly clear here. No study based on HMDA data alone can generate a conclusion that any lending institution has violated fair lending laws. The only reliable way to reach defensible conclusions about fair lending practices is through a combination of statistical analysis and loan file review through the examination process, the approach that is used by the Federal Reserve.

[2] Robbins, May 22, 2007.
[3] Robert Avery and Glenn Canner, *New Information Reported under HMDA and Its Application in Fair Lending Enforcement.* Federal Reserve Bulletin. Summer 2005. p 344-394.
[4] Avery and Canner, p 389-390.

2005 HMDA Data and Analysis

The Federal Reserve staff noted that the incidence of higher-priced lending was significantly greater in 2005 than in 2004. The authors attribute at least three effects contributed to this increased incidence of higher-priced lending.

The flattening of the yield curve and its relationship to fixed-rate loans is identified as having a critical effect. The spread between the APRs on thirty-year fixed-rate mortgages and the yield on the thirty-year Treasury security used to compute the threshold for HMDA reportable loans narrowed over the 2004-05 period.[5]

The second effect was a combination of the flattening of the yield curve and the APRs used to determine whether adjustable-rate loans met the threshold for being reported as higher priced under HMDA were artificially low in 2004. This stems from the relationship between the formula used to construct APRs for such loans and the interest rate situation that prevailed during the year. By the beginning of 2005, this effect had been largely eliminated because of the flattening yield curve. Consequently, ARM loans with the same credit-risk characteristics, would have had higher APRs in 2005 than in 2004, and therefore some of them would have surpassed the HMDA threshold in 2005, whereas a loan with the same risk characteristics would not have been reported as higher priced in 2004.[6]

Finally, the authors noted that the change in incidence reflected changes in the risk characteristics of lending due in large part to substantial house-price appreciation in some locales, and likely caused more borrowers to stretch financially to obtain loans.

Allocating the increase in the incidence of higher-priced lending across these three effects is difficult. Analysis of the 2004 HMDA data revealed substantial disparities in the incidence of higher-priced lending across racial and ethnic lines and further showed that such differences could not be fully explained by factors included in the HMDA data. The 2005 data show similar patterns.

Concerns About Expanding HMDA Data

Recognizing that the HMDA data is incomplete begs the question as to why Congress doesn't expand it to include borrower risk factors which would provide a more complete picture. There are four principal arguments against such an expansion.

First and foremost, an expansion would raise additional privacy concerns for consumers. Between existing HMDA data and other publicly available data, the identity of borrowers can already be determined. Many people would prefer that their neighbors not know their credit score.

Second, a requirement to collect credit scores in the HMDA data would raise the question of which credit scoring system to include. Fair Isaac's FICO score is the best known, but

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[5] Robert Avery, Kenneth Brevoort, and Glenn Canner, *Higher-Priced Home Lending and the 2005 HMDA Data.* Federal Reserve Bulletin. September 8, 2005.
[6] Avery, Brevoort, and Canner.

it is certainly not the only one used. Indeed, many creditors make lending decisions based upon their own proprietary scoring systems in addition to a FICO score.

Third, lenders would have to divulge the weight they give to different risk factors in pricing their loans, thereby eliminating any trade secrets that allow for vibrant competition.

And fourth, an expansion of HMDA wouldn't necessarily increase its effectiveness as a screening tool and is likely to cause the negative results just mentioned.

Recommendations

So if an expansion of the HMDA data is not the way to go, what do we recommend?

For one thing, we should recognize that the process is working as it should. Following the analysis of loan pricing data in both the 2004 and 2005 data sets, the Federal Reserve made referrals to fellow regulators at the federal state levels. Investigations are underway as we speak. Should this committee decide to make changes to HMDA or other fair lending provisions, it should do so only after reviewing all the facts that the regulators have to report.

We also must not forget that conclusions can only be drawn by looking at individual loan files, which regulators at the federal and state level already have the authority to do.

In addition, we must be mindful of how any changes to HMDA might affect the industry's ability to provide borrowing options for borrowers facing reset or foreclosure.

Finally, it's worth repeating that -- no matter how small -- pricing disparities between borrowers who have different racial or ethnic backgrounds but identical economic risk profiles and types of loans are unacceptable. Going forward, Congress, regulators, the mortgage lending industry and others committed to affordable lending should work together to determine why any disparities exist so that we can take the necessary steps to eliminate them.

Mr. Chairman, I want to thank you again for inviting me to participate in this important hearing. That concludes my statement and I would be happy to answer any questions the Members of the Subcommittee may have.

FORECLOSURE PREVENTION: STEPS TAKEN BY INDUSTRY[1]

Foreclosing on a property is an expensive and protracted process for lenders[2] and borrowers alike. Generally, mortgage lenders lose money in foreclosure situations. For this reason, many lenders are taking actions to help identify borrowers in need and prevent foreclosure. What follows is a summary of practices that lenders are using to help troubled borrowers keep their homes. These practices include engaging in early-stage loss mitigation, training and hiring new staff, modifying loan terms, refinancing, and partnering with nonprofit organizations.

ENGAGING IN EARLY-STAGE LOSS MITIGATION CONTACT AND CLOSELY MONITORING ACCOUNTS

Early and proactive contact with a borrower has always been a mortgage lender's top priority. Now lenders are starting to outreach to certain borrowers even when they have never been delinquent. This outreach takes place through personal contact or through an agency months before an interest rate adjustment occurs.[3] In the case of hybrid Adjustable-Rate Mortgages (ARMs), early contact helps the borrower assess whether he or she will be able to afford the loan once the rate adjusts, and whether a strategy to avoid foreclosure would be a feasible option for the borrower.[4]

Lenders continuously categorize the risk profiles of borrowers based on borrower characteristics, loan types, and possible delinquencies to help them decide who to contact early. When no solution seems feasible, lenders typically conduct a final review of all delinquent loans to be sure that every possible option was considered in an effort to prevent foreclosure.[5]

Through early contact with the borrower, companies are also attempting to curb challenges sometimes associated with an increase in monthly payments. Some lenders notify all ARM borrowers up to six months in advance regarding a scheduled payment change date, actively reminding borrowers to assess their financial situation before their new payment rates go into effect.[6] Other lenders contact their customers at least 45 days in advance to be informed of a payment increase. The sooner lenders work with the customer, the higher the probability of identifying a problem and finding a solution.

When communicating with a borrower, agents can retrieve their account history and inform them of their current financial status with the company. If a payment is late, companies are proactively helping borrowers before becoming seriously delinquent, a measure that can also help protect their credit.[7]

Some companies are implementing default administration areas integrated with specialized units, such as government and subprime. In each unit, counselors oversee delinquent loans on a daily basis through

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[1] This report is based on numerous industry sources. Standard & Poor's Ratings Services recently issued a report pertaining to steps the subprime industry and special mortgage loan lenders are taking to deal with the raise in delinquencies, and other early payment defaults on loans. This foreclosure mitigation report is largely based on the S&P findings, other resources as noted, and direct information acquired from several member companies. Member companies surveyed in the preparation of this report include (alphabetically) ACC Capital Holdings / Ameriquest, AIG, CIT, CitiGroup, Countrywide, GE, GMAC, HSBC, Option One, and Wells Fargo.
[2] This paper refers to both lenders and lenders of loans. "Servicing is the collection of mortgage payments from borrowers and related responsibilities of a loan lender. A loan lender is an organization that collects principal and interest payments from borrowers and manages borrowers' escrow accounts. The lender often services mortgages that have been purchased by an investor in the secondary mortgage market." Glossary, www.fanniemae.com, *last visited June 8, 2007.*
[3] Standard & Poor's, *Subprime Loan Lenders Step up Loss Mitigation Efforts to Avoid Foreclosures* (Mar. 14, 2007), *at* http://www2.standardandpoors.com/portal/site/sp/en/us/page.article/3,1,1,0,1148442756243.html
[4] Jonathan D. Epstein, *Lenders Offer First Line of Help to Fight off Foreclosure* (May 7, 2007), *at* http://www.buffalonews.com/258/story/69621.html?imw=Y
[5] Standard & Poor's, *Subprime Loan Lenders Step up Loss Mitigation Efforts to Avoid Foreclosures, supra* note 3.
[6] *Id.*
[7] *Id.*

calls to borrowers with the objective of curing defaults. These companies are working with borrowers to offer workout options based on agency, business, or investor partner guidelines.

Many lenders now consider all distressed loans to be eligible for loss mitigation, even those with first-payment defaults. They have established contact centers with extended hours so borrowers have an opportunity to discuss their accounts at times convenient to them. Considering that borrowers may prefer to resolve their issues in person and not over the phone, companies are expanding satellite offices in high foreclosure rate areas.[8] Sometimes this involves sending teams of counselors into cities experiencing unusually high delinquency and default rates to work with borrowers face-to-face. One company is even distributing pre-paid cell phones to facilitate contact with delinquent borrowers classified as "no contact" accounts.

ONGOING TRAINING AND HIRING NEW STAFF

Lenders are training corporate customer service and early collections staff to listen for triggers in borrower phone calls that might suggest a need to refer the call to a loss mitigation specialist.[9] For most companies, early contact with customers requires highly trained staff to assist the needs of borrowers. Some companies require employees to complete120 hours or more of training before answering calls from borrowers; and thereafter require as much as 40 hours per year of specialized training.

Hiring additional personnel is another measure taken by lenders to better assist the needs of customers.[10]Lenders are actively increasing the number of employees to avoid having to refer customers to external companies. Lenders are further enhancing default management and home retention programs by ensuring proper staffing levels that allow agents to devote more time to borrowers, and restrict loss mitigation calls to only seasoned employees.[11] RBC Capital Markets predicts that lenders outside of the subprime market will also move toward hiring extra "loss mitigation" personnel.[12]

MODIFYING LOAN TERMS OR REFINANCING

Some companies are helping borrowers find manageable payments through loan modification.[13] For example, some lenders are allowing repayment plans where unpaid balances are gradually reduced through small, affordable increments to borrowers' monthly payments.[14] Repayment plans, with escrow shortages past the traditional 12-month period, are another option being offered by lenders.[15]

Though lenders are actively attempting to work with borrowers to minimize losses, the successful modification of a loan may not be an easy task due to securitized mortgages combined with legal and accounting restrictions. For example once a loan is securitized, the Pooling and Servicing Agreement (PSA) may place a limit on the number of accounts that can be modified.[16] Also, lenders may not be willing to work out an agreement with the servicer due to accounting principles that might bring back substantially modified pools to the originator's balance sheet. According to the Federal Reserve Chairman Ben Bernanke, "[m]odifications that reallocate expected cash flows across different securities associated with the pool could trigger a review of those securities by the ratings agencies. At the same time, if

[8] Standard & Poor's, *Subprime Loan Lenders Step up Loss Mitigation Efforts to Avoid Foreclosures*, *supra* note 3.
[9] *Id.*
[10] *Id.*
[11] Standard & Poor's, *Subprime Loan Lenders Step up Loss Mitigation Efforts to Avoid Foreclosures*, *supra* note 3.
[12] *Id*; The Center for Statistical Research Inc., *U.S. Mortgage Borrowing: Providing Americans with Opportunity, or Imposing Excessive Risk?* (May 2007) ("Although foreclosure start rates are rising in subprime fixed and adjustable rate loans, they are also rising in prime and FHA fixed and adjustable rate loans, suggesting that broad economic conditions are driving the current upturn") *at* http://www.afsaonline.org/sitepages/sga_resources.cfm.
[13] Standard & Poor's, *Subprime Loan Lenders Step up Loss Mitigation Efforts to Avoid Foreclosures*, *supra* note 3.
[14] Kenneth Harney, *Lenders working to keep people out of foreclosure* (Apr. 15, 2007) , San Francisco Chronicle, *at* http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/04/15/REG4LP8FQ01.DTL
[15] Standard & Poor's, *Subprime Loan Lenders Step up Loss Mitigation Efforts to Avoid Foreclosures*, *supra* note 3.
[16] Wall Street Journal, *Text of Chairman Bernanke's Speech at the 43rd annual Conference on Bank Structure and Competition hosted by the Federal Reserve Bank of Chicago* (May 17, 2007).

workouts are economically viable, then an incentive exists for third parties to purchase distressed pools at a discount and to undertake the workout process."[17] This type of purchase taking place in the market place might contribute to an increase in successful workouts.[18]

In some circumstances, companies are allowing borrowers to repay loans and avoid foreclosure through temporary or permanent relief of their loans. Such programs focus on borrowers who find it difficult to repay their loan due to a temporary change in their circumstances, such as loss of employment and/or reduction in wages. In some situations, the relief might be permanent since the customer's circumstances may be more disastrous, such as a permanent disability or death.[19]

Temporary forbearance is another solution that is being utilized wherever possible. Forbearance is an informal agreement that allows the temporary relief of the loan by spreading out repayment of past due balances over an extended period of time (usually 3 to 12 months).

Companies are also staffing up with seasoned loan modification experts who work with borrowers who cannot meet their mortgage obligations at the current rate and term. The staff's objective is to modify the loan requirements in such a way that it allows borrowers to pay their loan and avoid foreclosure. These measures focus on reaching out proactively to individual borrowers rather than waiting for borrowers to contact them.[20]

Lenders are also negotiating longer-term repayment plans with delinquent borrowers where possible. These plans provide borrowers with a set time period, such as 18 months, to catch up on their payments.[21]

In situations where home values may have declined below the loan balance, the industry is evaluating programs with the Federal Housing Administration (FHA) and Government-Sponsored Enterprises (such as Fannie Mae and Freddie Mac) that would allow a streamlined refinance in which the difference between the amount of the new loan and the balances owed on the previous loan are placed into a second mortgage loan carrying minimal or no interest rate and no monthly payments that would be due depending on the borrower's ability to repay it and/or upon the sale of the more. Credit risk on the second mortgage would be shared by the lender, Wall Street bond investors, the federal government and/or other mortgage market investors.[22] The latter innovation may provide an answer for borrowers facing unaffordable payment increases and simply got in over their heads and mistimed the end of the boom."[23]

As a last resort when a loan modification or forbearance is not a feasible option for the borrower, some lenders will allow a short-sale or a deed in lieu of foreclosure. Through a short-sale, the borrower in default avoids foreclosure by selling his or her house for less than the value of the loan. The lender then collects the proceeds from the sale, and in most cases forgives the remaining part of the debt.[24] A deed in lieu of foreclosure allows the borrower to deed back the property to the lender. In turn, the lender forgives the debt, releasing the borrower from all obligations under the mortgage.[25] Both options have less harmful effects on the borrower's credit than foreclosure.

PARTNERING WITH NONPROFIT ORGANIZATIONS

[17] *Id.*
[18] *Id.*
[19] Senate Committee On Banking, Housing, And Urban Affairs, *Hearings On "Mortgage Market Turmoil: Causes And Consequences"* (Mar. 22, 2007) , *at* http://banking.senate.gov/_files/mcdonagh.pdf
[20] Kenneth Harney, *Lenders Working to Keep People out of Foreclosure*, *supra* note 18.
[21] Real Estate News, *Workouts Could Soften Impact of Subprime Lending Woes* (Apr. 9, 2007) *at* http://www.toprealtynews.com/realestatenews/id_34911
[22] *Id.*
[23] *Id.*
[24] Arthur Chapman, *Workouts Could Soften Impact of Subprime Lending Woes*, *supra* note 6; Carol Lloyd *Short Sale can Help Homeowner facing Foreclosure* (May 6, 2007), *at* http://www.sfgate.com/cgiin/article.cgi?f=/c/a/2007/05/06/BUGHTPL0E41.DTL&feed=rss.business
[25] http://www.hud.gov/offices/hsg/sfh/nsc/faqdil.cfm

Major lenders are partnering with and contributing money to organizations that counsel borrowers about refinancing mortgages and coming up with options to help them keep their homes. Among the participating organizations are Save Our Homes Task Force,[26] the Neighborhood Assistance Corporation,[27] NeighborWorks America,[28] and the National Training and Information Center.[29]

More than 20 leading companies support the Homeownership Preservation Foundation, an independent non-profit organization dedicated to preserving homeownership.[30] The foundation provides 24/7 access to trained foreclosure prevention counselors who will work with the borrower to help him or her develop a budget and explore loan work-out options with their lender. Borrowers can reach the organization through their toll-free number 1-888-995-HOPE hotline.

Some companies have taken interacting with these counseling agencies to a whole new level. When a delinquent borrower, or a borrower who indicates they will have trouble making future payments, expresses their financial concern, highly skilled loan agents perform a "warm transfer" to a selected counseling agency. The company phones the counseling agency with the borrower on the line and introduces the borrower to a loan counselor. The company then transfers the call to the counseling agency for the borrower to discuss their situation in private.

AFSA and its members are strong supporters of programs that educate borrowers on the financial responsibilities that come with owning a home. The AFSA Education Foundation (AFSAEF) produces educational materials which warn consumers of the risks of foreclosure. Other AFSAEF materials and AFSAEF's MoneySKILL program train consumers and future consumers about responsible money management.

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[26] Standard & Poor's, *Subprime Loan Lenders Step up Loss Mitigation Efforts to Avoid Foreclosures, supra* note 3.
[27] Kathleen Pender, *Why we Shouldn't be Bailing out Subprime Lenders or Borrowers* (Apr. 22, 2007), San Francisco Chronicle, *at* http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/04/22/BUGU9PB34E1.DTL
[28] Standard & Poor's, *Subprime Loan Lenders Step up Loss Mitigation Efforts to Avoid Foreclosures, supra* note 3
[29] News Max, *Lenders on Rescue Mission to Limit Foreclosure* (Apr. 26, 2007) , *at* http://www.newsmax.com/archives/articles/2007/4/25/214317.shtml?s=lh , Kathleen Pender, *Why We Shouldn't Be Bailing Out Subprime Lenders or Borrowers* (Apr. 22, 2007), San Francisco Chronicle, *at* http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/04/22/BUGU9PB34E1.DTL
[30] HPF partners include: American General Financial Services, a member of AIG, Inc., Citigroup, Countrywide Home Loans, GE, Homecomings Financial – a GMAC company, HSBC – North America, JP Morgan Chase, Option One Mortgage and Wells Fargo Home Mortgage. *Information provided by the Housing Policy Council.*

WRITTEN STATEMENT OF KIM KENDRICK

Assistant Secretary for Fair Housing & Equal Opportunity
U.S. Department of Housing and Urban Development

Hearing before the Committee on Financial Services
Subcommittee on Oversight & Investigations

United States House of Representatives

"Home Mortgage Disclosure Act (HMDA)"

July 25, 2007

Chairman Watt, Ranking Member Miller, Members of the Subcommittee, good morning. I am Kim Kendrick, Assistant Secretary for the Office of Fair Housing and Equal Opportunity (FHEO) at the U.S. Department of Housing and Urban Development (HUD). On behalf of Secretary Alphonso Jackson, I am honored to have the opportunity to testify before you today.

Homeownership in America is at a historical level – nearly 70 percent of Americans own their home. For individuals and families, homeownership is the key to financial independence and wealth creation. And for our nation as a whole, the housing sector has been vital to the health of the U.S. economy and the stability and vibrancy of our communities.

Understanding the importance of homeownership to our nation's economy, the Department is concerned about the rise in foreclosures associated with subprime mortgage loans and is taking a proactive approach in addressing these problems. As the federal agency charged with protecting homebuyers and homeowners from unlawful discrimination, HUD, and specifically the office I head, FHEO, is committed to doing all it can to ensure that discriminatory lenders are held responsible for their actions.

HUD and FHAP Investigations

The primary way HUD protects homebuyers from discrimination is by aggressively enforcing the Fair Housing Act. The Fair Housing Act prohibits mortgage lending practices that discriminate on the basis of race, color, national origin, sex, religion, disability, or familial status. HUD shares its authority to investigate fair housing complaints, including fair lending complaints, with 106 state and local agencies that HUD has certified through its Fair Housing Assistance Program (FHAP). FHAP agencies enforce state and local laws that provide rights, remedies, and procedures substantially equivalent to those provided under the Fair Housing Act. FHAP agencies handle about 75% of the complaints that allege Fair Housing Act violations.

Since FY 2004, the Department and its state and local partners have investigated about 446 cases of lending discrimination each year. This year we have already completed the investigation of more than 425 lending discrimination cases. These cases may allege discrimination in loan terms, conditions, pricing, or that the lender targeted the borrower for a predatory loan because of race or national origin.

HUD and our state and local partners investigate each of theses cases and, as required by the Fair Housing Act, attempt conciliation. All told, we reach a determination on the merits in about 55 percent of the investigations that allege lending discrimination and reach a conciliation agreement in about 28 percent of such investigations.

Conciliation agreements, voluntary settlements between the parties, provide quick resolution and meaningful relief to the complainant. HUD and the FHAP agencies also ensure that conciliation agreements include terms that satisfy the public interest. This may include a promise by the respondent to comply with the Fair Housing Act and undertake other actions, such as fair housing training for its employees, broader marketing, a monetary contribution to a fair housing agency, or a change in the lender's policies or procedures. If a lender violates a HUD-executed conciliation agreement, HUD may refer the agreement to the Department of Justice for enforcement.

In an example of one lending case investigated by my office, an African-American couple filed a complaint with HUD against First Franklin Financial Bank and Primary Residential Mortgage. The complainants attempted to purchase a home with a fixed-rate mortgage, but alleged that, because of their race, the lender had switched the loan to an adjustable rate mortgage with a prepayment penalty and an additional $4,000 in closing costs. During the investigation, HUD interviewed the parties and reviewed all the loan documentation and closing paperwork. In addition, HUD obtained data on this and similar loans from the lender.

When HUD conciliated the case in 2006, the complainants received $4,000 from the respondents. More importantly, the complainants received a new fixed rate mortgage, waiver of the pre-payment penalty clause, and waiver of closing costs on the new loan, saving them a significant amount of money in interest over the life of the loan. First Franklin Financial Bank and Primary Residential Mortgage also agreed to require fair housing training for all of their employees and to use the fair housing logo in all of their marketing and advertisements.

In another lending investigation, a FHAP agency, the Pennsylvania Human Relations Commission (PHRC) made a finding of discrimination against a lender. PHRC investigated McGlawn & McGlawn, a licensed mortgage broker in the Philadelphia area, and found reasonable cause to believe that the lender discriminated against 10 African-American homebuyers. PHRC specifically found that McGlawn & McGlawn based its entire marketing package on race, using African-American media outlets, including: radio, newspapers, and television, to intentionally target African Americans and their neighborhoods for predatory mortgage loans. McGlawn's predatory lending practices included, undisclosed fees, high interest rates based on the borrowers' race, high points and padded closing costs, falsification of information on documents, failure to disclose information, and high pressure sales tactics. The Commissioners of the PHRC approved a decision that ordered McGlawn & McGlawn to pay the homeowners $885,000 in various damages for violating Pennsylvania's fair housing laws.

These are success stories that HUD is particularly proud of. To further support and encourage this work, HUD set aside $900,000 in its FY2007 budget to encourage state and local agencies to address predatory lending. This funding will be awarded to the FHAP agencies with the best proposal to address the discriminatory aspects of predatory lending within their state. The projects will focus on enforcement of fair housing and lending laws and include education and outreach to teach consumers how not to become victims. As part of the project, the agencies selected to receive funding must be able to assist other states in replicating their initiative.

Systemic Cases

HUD also pursues cases of systemic lending discrimination. These cases involve the policies or practices of lending institutions and affect a large number of borrowers. For example, HUD is currently investigating a number of complaints filed by the National Community Reinvestment Coalition (NCRC) that allege that certain policies of some national lenders discriminate on the basis of race.

While HUD cannot comment on the NCRC cases that are still under investigation, in May 2007, HUD conciliated one of NCRC's cases. NCRC alleged that policies in First Indiana Bank's General Loan Requirements discriminated against African Americans. These policies included: (a) minimum property value restrictions; (b) minimum loan amounts; and (c) refusal to make loans on row houses. As part of the conciliation, First Indiana Bank agreed to pay NCRC $100,000 and to discontinue its minimum property value and no-row home policies. In addition, First Indiana Bank will reconsider any loan that it denied because of these exclusions.

HMDA Investigations

In addition to investigating individual complaints, HUD has the authority to initiate investigations into mortgage lenders even without such a complaint. In September 2005, the Federal Reserve Board (FRB) provided HUD, the Department of Justice (DOJ), and the Federal Trade Commission (FTC) with a list of independent mortgage companies that the FRB had identified as having disparities in the incidence, denial rate, or rate spread of high-cost loans based on the 2004 HMDA data. This was the first year pricing information was included in the HMDA data, allowing the FRB to create this list. The addition of pricing data provides a valuable tool for examining the practices of various lenders. Nevertheless, because the HMDA data does not include critical information such as borrowers' credit scores or the loan-to-value ratio of the properties, it is impossible to ascertain from HMDA data alone if differences in pricing are due to discrimination against minority borrowers. The Department uses its authority under the Fair Housing Act, including its subpoena power, to obtain additional loan information to determine whether the differences in pricing are due to race or can be explained by other factors.

In October 2005, HUD assembled an internal workgroup from various offices – investigators from FHEO, attorneys from its Office of General Counsel (OGC), and economists from its Office of Policy Development and Research (PD&R) – to select lenders from the FRB's list for possible investigation.

HUD met with the FRB to discuss its analysis and obtain the FRB's assistance in further refining its list. In December 2005, HUD requested and received detailed data on eight lenders identified on the FRB's list. This additional data allowed HUD to look at disparities by geographic location, loan type, and other characteristics.

Over the next three months, HUD further narrowed the FRB's list. Investigators from FHEO reviewed housing complaints filed in the previous five years against the identified lenders. FHEO examined the structure, operation, and consumer complaint history of these lenders. FHEO also contacted fair housing and consumer groups to find out if any of those lenders were among those against which they had received complaints. Economists from PD&R analyzed the supplementary data provided by the FRB, focusing on mortgage companies where the matched-pair analysis of HMDA data showed significant rate-spread disparities between minority and white borrowers. During this period, HUD, FTC, and DOJ began to meet regularly to discuss methodologies for reviewing the data and strategies for selecting lenders.

We then selected the lender, where we determined it was most likely we would be able to prove a case of discrimination, and, on April 14, 2006, I authorized a Secretary-initiated investigation based the 2004 HMDA data and other information. We selected this lender, in part, because its 2004 HMDA showed significant disparities in the pricing of loans to minority and white borrowers. That same day, we sent the lender notice of the investigation and a request for information.

At that time, FHEO did not have a full-time economist to assist with lending investigations, so in May 2006, HUD sought a contract for a company to provide expert econometric analysis to assist in its Secretary-initiated investigations. In October 2006, HUD awarded the contract to Integrated Financial Engineering, Inc. (IFE), which offered a team of economists and attorneys with significant lending expertise and the capacity to assist HUD with multiple investigations.

In June 2006, HUD received a written response from the lender. The response provided manuals and guidelines requested by HUD. Later that month, the lender provided one year's loan-level data with a promise of additional data to follow. HUD reviewed the manuals, guidelines, and procedures of the lender and conducted a limited analysis of the lender's data in preparation for the contractor's work. When HUD's contractor came on board in October 2006 to assist with the investigation, the contractor began a more sophisticated analysis of the data submitted by the lender. The contractor found problems with the initial data submission, and in November 2006, the lender resubmitted its loan-level data in a usable form.

From November 2006 through February 2007, HUD's contractor reviewed and analyzed the lender's loan-level data. In February 2007, HUD requested the lender's 2006 data. The Department received this data in March 2007, and the contractor promptly began reviewing it. In March 2007, HUD also received the lender's analysis and explanation of any disparities in its 2005 lending portfolio. HUD and the contractor examined this response and reviewed legal issues in the case. In July 2007, HUD received the lender's analysis of its 2006 loan-level data. HUD is currently reviewing this analysis.

To date, the contractor has analyzed data from more than 300,000 loans and loan applications for this lender alone. In reviewing this data, the contractor has employed multiple statistical methods in order to ascertain whether the difference in pricing between minority and white borrowers is due to race. Analysis of the loan files is made more complicated because the lender has more than 800 different loan products, making it difficult to compare consumers. HUD's investigation of this lender is ongoing.

During this same period, HUD continued to search for additional targets for investigation. In September 2006, HUD requested from the FRB's analysis of subprime pricing disparities in the 2005 HMDA data. Then, using the methodology HUD established for the first lender, HUD began to narrow the September 2006 list for the best targets.

In addition to the contractor's responsibilities to assist in the first investigation, IFE's contract requires it to develop a statistical methodology using the HMDA data to identify lenders that potentially discriminate in pricing. As of February 2007, HUD had already reduced the FRB's September 2006 list to 15 possible targets and had requested detailed data on these lenders from the FRB. In March 2007, HUD received the additional data from the FRB and provided it to the contractor, who analyzed it and ranked the lenders based on criteria that HUD had established.

Based in part on the contractor's analysis of the 2005 HMDA Data, in May 2007, HUD selected two additional independent mortgage companies for Secretary-initiated investigations. On June 5, 2007, I authorized these investigations. HUD sent each lender notice of its investigation and a request for data and information. HUD has received an initial response from each lender and is following up as appropriate.

Three weeks ago, the Department received the 2006 HMDA data from the FRB. We are currently analyzing this data and our complaint information to target lenders with significant pricing disparities for investigation.

Homeowner Insurance Investigations

Another way that HUD protects the rights of homeowners is by ensuring that insurance companies provide homeowners insurance to everyone at equal terms regardless of race, color, religion, sex, national origin, disability, or familial status. This is critical because most homebuyers cannot get a home without a mortgage and cannot get a mortgage without homeowner insurance.

In October 2006, the Department charged Erie Insurance Group and five agencies licensed to sell Erie insurance products with violating the Fair Housing Act by providing less insurance coverage to New York neighborhoods with significant African-American populations. The parties elected to have the case heard in federal court, and the case is currently pending with DOJ.

RESPA Assistance

For homeowners who were not victims of discrimination, but nonetheless obtained a loan with unfavorable terms, fell behind in their mortgage payments, and face the possibility of foreclosure, FHEO coordinates with HUD's Real Estate Settlement Procedures Act (RESPA) Office to secure relief for them.

RESPA does not give the Department the authority to require that a lender cancel a mortgage debt or pay a monetary settlement to a consumer. Nevertheless, HUD's RESPA Office has successfully negotiated loan modification agreements from lenders on behalf of numerous homeowners. If we can fix a mortgage and avoid foreclosure, both the borrower and the lender benefit.

In one such case, referred to RESPA by FHEO, the Department negotiated a loan modification agreement that reduced an elderly African-American homeowner's loan balance back to the amount before the unfavorable refinance and changed the refinance adjustable rate mortgage into a lower rate 30-year fixed mortgage.

These settlements are often the best outcome for a borrower. Usually the homeowner wants to hold onto their home, and may be just one bill away from foreclosure. If we can fix a mortgage and make the person whole, we have served the public.

Oversight of Fannie Mae and Freddie Mac

HUD also assists homeowners by ensuring that the secondary mortgage market operates free from discrimination, through its oversight of Fannie Mae and Freddie Mac. HUD meets with Fannie Mae and Freddie Mac quarterly and reviews all of Fannie Mae's and Freddie Mac's new programs to ensure that they comply with fair lending laws. In addition, HUD regularly reviews the automated underwriting systems of Fannie Mae and Freddie Mac to ensure that they do not discriminate in violation of the Fair Housing Act or Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA).

Fair Lending Division

In carrying out these investigations, the Department recognized the need to hire additional staff to focus on this effort. For this reason, I have created a new Fair Lending

Division that will review mortgage lending practices throughout the nation. I decided to concentrate this expertise within the Office of Systemic Investigations, which is responsible for overseeing systemic and Secretary-initiated investigations.

We have already hired a senior-level economist and are recruiting five fair lending specialists to complete our Fair Lending Division and enhance our capacity to investigate allegations of mortgage lending discrimination. This Fair Lending Division will investigate discrimination complaints against lenders who have allegedly violated the Fair Housing Act by refusing to make mortgage loans, refusing to provide the same information regarding loans, or imposing different terms or conditions for granting a loan, such as factors based on the race or national origin of the borrower. The Division will also conduct investigations where lending patterns or other information suggests discrimination by a lender, but no individual has come forward to file a complaint. In addition, the Division will conduct HUD's fair lending oversight of the Government-Sponsored Enterprises – Fannie Mae and Freddie Mac – to ensure their underwriting policies and practices comply with fair lending laws.

National Fair Housing Training Academy

To improve the fair lending investigation skills of investigators throughout HUD and in the state and local agencies in FHAP, the Department's National Fair Housing Training Academy has added a course on lending investigations. The Academy will begin offering this course in August 2007. The Academy has engaged some of the foremost experts and instructors in lending to design a curriculum that will provide investigators with practical, hands on approach to developing legal strategies and theories to assist victims of lending discrimination in seeking remedies.

Fair Housing Initiatives Program (FHIP)

HUD also addresses lending discrimination through FHEO's Fair Housing Initiatives Program (FHIP). This program funds community and nonprofit organizations that conduct community-based enforcement of the Fair Housing Act. Through FHIP, HUD provides funding to many fair housing organizations to address lending discrimination. These grants are used to assist victims of predatory lending and lending discrimination, test for discrimination, and conduct education and outreach to prevent lending discrimination.

For example, for the past two years, HUD has awarded FHIP grants to Project Sentinel in California. With this funding, Project Sentinel has partnered with a legal assistance group to screen clients for predatory lending, provide legal consultations and representation of predatory lending victims, and to contact at-risk borrowers in an effort to gather information about their experience with certain lenders. In addition, Project Sentinel has participated in predatory lending meetings in Santa Clara County.

Education and Outreach

HUD's enforcement and oversight activities, however, are not enough to prevent unfair housing practices. We also seek to educate the public about their fair housing rights. To do that, the Department is engaged in a number of initiatives. In April, HUD placed a public service message that was shown in over 700 movie screens across the nation. In addition, HUD has continued to air its award-winning PSAs on television and radio stations. This year, articles to educate the public about fair housing have been published in Essence Magazine and Parade Magazine. In addition, HUD publicly announces all of its charges and major conciliations to inform the public about fair housing enforcement.

FHA

HUD has looked at a variety of ways to protect homebuyers from unsafe loans and predatory lenders who target particular populations, including new legislation. Last fall, Secretary Jackson and Commissioner Brian Montgomery established a plan to modernize the Federal Housing Administration (FHA) so it could reclaim its traditional role of providing a safe and affordable alternative for underserved communities within the housing market. Modernizing FHA would give it the tools it needs to offer more affordable financing options to hard-working credit-worthy borrowers. American homebuyers need FHA.

Legislation to modernize FHA is critical. That's why HUD is so pleased that FHA reforms have been introduced in both the House and Senate to eliminate the traditional 3-percent downpayment requirement, create a new risk-based mortgage insurance premium structure, and raise and simplify FHA loan limits.

Housing Counseling Program

HUD is also educating people looking for houses so that they go into the homebuying process with a greater understanding of their rights. Through its Housing Counseling Program, HUD educates potential homebuyers so that they better understand the process of buying or leasing a home and better understand their rights. An educated consumer is much less likely to be taken advantage of or to enter into overly expensive housing transactions. For this reason, HUD has significantly boosted funds for housing counseling. Up from $8 million in 2001, the President's budget for the coming year proposes $50 million for housing counseling – services that will help families prepare financially for homeownership, get their credit scores in order, learn how to avoid predatory lending, and mortgage defaults. The Housing Counseling Program is just one of many programs that HUD is using to decrease the homeownership gap between whites and African-Americans.

American Dream Down Payment Initiative

At the same time, HUD is attempting to make homeownership more affordable. The American Dream Downpayment Initiative enacted in December 2003 provides closing costs and down payment assistance to low-income homebuyers. In the past three years alone, HUD has made tremendous progress in helping more than 21,000 low-income families with downpayment assistance. Fifty percent of the people helped with this program are minorities. Congress needs to reauthorize this successful program.

Self-Help Homeownership Opportunity Program

The Self-Help Homeownership Opportunity Program (SHOP) provides grant money to national and regional non-profit organizations in order to boost homeownership among low- to moderate-income individuals. Grantees such as Habitat for Humanity International work in local communities and abroad to develop homes through self-help and sweat equity housing initiatives.

Homeownership Voucher Program

Finally, HUD's Homeownership Voucher Program allows families with Section 8 vouchers to use their vouchers to help pay the mortgage for a home that they purchase. Families approved for Section 8 homeownership vouchers can switch from rental assistance to mortgage assistance when they are ready to buy a house. Since the Program's inception in 2000, more than 7,500 former public housing residents have become homeowners. The President's 2008 budget calls for additional funds to assist 10,000 additional families to become homeowners.

Conclusion

Homeownership is the cornerstone of the American Dream. It takes most of us several years to save up or otherwise prepare ourselves to be homeowners. At HUD, we want to be sure that race or national origin is never a barrier to homeownership. We will continue to investigate the cases, continue to obtain meaningful relief for individuals, and continue to eliminate discriminatory practices until we are confident that all lenders are providing all consumers with the loans they deserve.

Thank you for the opportunity to testify today. I look forward to answering your questions.

Written Testimony by Michael LaCour-Little
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U.S. House of Representatives
House Committee on Financial Services
Subcommittee on Oversight and Investigations

July 25, 2007

Introduction

Good afternoon, Mr. Chairman and members of the Committee. My name is Michael LaCour-Little. I am Professor of Finance at California State University – Fullerton. It is an honor to testify here today on the topic of the Home Mortgage Disclosure Act (HMDA). My recent research paper[1], which is included with my written testimony, addresses aggregate patterns in the 2004-2005 HMDA data and offers a forecast of 2006 results. Much of my testimony today will consist of highlights from that paper. In addition, I am currently editing a special issue of the *Journal of Real Estate Research* on the topic on HMDA and believe many of the papers contained in that volume will provide important information that policymakers should consider.

Patterns in the 2004-2005 HMDA Data

Last year's release of the 2005 HMDA data raised a number of questions given the increase in the number and percentage of higher-cost (or what I will refer to as HMDA spread-reportable) loans and continued differentials across racial and ethnic groups. My work specifically assesses three possible reasons for that increase, as well as proposing others. The three reasons evaluated include: (1) changes in lender business practices; (2) changes in borrower credit profile; and (3) changes in the interest rate environment.

Since the incidence of HMDA spread-reportable loans increased during 2005, it is tempting to infer that subprime lending must have increased proportionately. Indeed, the media and some commentators tend to equate HMDA spread-reportable loans with subprime. My research indicates, however, that the relationship is not so simple.

It is also important to remember that the new HMDA data does not contain information on many of the factors that affect credit risk and the economics of mortgage lending. As a result, the new HMDA data is sufficient neither to explain the pricing of loans nor to draw conclusions about pricing fairness. At best, the bank regulatory agencies can use HMDA data as a preliminary screening tool to identify markets or institutions for further scrutiny.

[1] LaCour-Little, Michael. 2007. Economic Factors Affecting Home Mortgage Disclosure Act Reporting. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=992815

Let me highlight several major conclusions of my research for you. First, I do not find an increase in average borrower risk in 2005, though there does appear to be an increase in the use of riskier products in 2005 (such as loans that allow negative amortization) and the average loan-to-value ratio (LTV) did appear to increase for home purchase loans during 2006. Second, the yield curve accounted for a significant part of the growth in HMDA spread-reportable loans in 2005. Third, wholesale originations played a major role in explaining the overall growth in HMDA spread-reportable lending. Results reported in my paper suggest that after controlling for the mix of loan types, credit risk factors, and the yield curve, there was no statistically significant increase in reportable volume for loans originated directly by lenders during 2005, though wholesale originations did increase.

My research identifies nine major factors that explain why a loan is HMDA spread-reportable: loan size; term; purpose; property type; whether the loan is an ARM; credit score; LTV; origination channel; and the yield curve slope. In addition, I find that the market price of risk increased by approximately 15 basis points during both 2005 and 2006, implying that rates were higher for all borrowers on a risk-adjusted basis.

Finally, let me offer a forecast for the 2006 results when they are released later this year. Given the change in interest rates, the likely mix of ARM versus FRM, the increase in average LTV, and other factors, I predict that approximately 28% of loans will be HMDA spread-reportable.

Special Issue of the Journal of Real Estate Research

I mentioned earlier the special issue on HMDA that will be published later this year. Included in that volume will be an article that examines the differential in Annual Percentage Rate (APR) paid by minority versus white borrowers, controlling for the segment of the market through which the loan is obtained, credit risk variables, and other economic factors. The paper utilizes a unique proprietary data set that includes over one million individual loan records from multiple lenders and many of the pricing related variables not included in HMDA. The authors find that raw disparities in the APR, which are on the order of 50-100 basis points, decline to roughly 5-10 basis points when appropriate controls for market segment and credit risk are included. The authors remark

"... public policies aimed at remediating APR differentials would achieve a far greater return through the elimination of race/ethnicity differentials in FICO scores, income, wealth used to lower LTV ratios, and, arguably, financial literacy, than they would through the elimination of any possible disparate treatment." [2]

Mr. Chairman, I thank you for the opportunity to share these thought today and would be happy to answer any questions.

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[2] Courchane, Marsha and Peter Zorn. 2007. The Pricing of Home Mortgage Loans to Minority Borrowers: How Much of the APR Differential Can We Explain? *Journal of Real Estate Research,* forthcoming.

Economic Factors Affecting Home Mortgage Disclosure Act Reporting

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Economic Factors Affecting Home Mortgage Disclosure Act Reporting

Abstract

The public release of the 2004-2005 Home Mortgage Disclosure Act data raised a number of questions given the increase in the number and percentage of higher-priced home mortgage loans and continued differentials across demographic groups. Here we assess three possible explanations for the observed increase in 2005 over 2004: (1) changes in lender business practices; (2) changes in the risk profile of borrowers; and (3) changes in the yield curve environment. Results suggest that after controlling for the mix of loan types, credit risk factors, and the yield curve, there was no statistically significant increase in reportable volume for loans originated directly by lenders during 2005, though indirect, wholesale originations did significantly increase. Finally, given a model of the factors affecting results for 2004-2005, we predict that 2006 results will continue to show an increase in the percentage of loans that are higher priced when final numbers are released in September 2007.

1. Introduction

The Home Mortgage Disclosure Act (HMDA) was enacted in 1975 as a result of policymaker concerns that financial institutions were failing to provide mortgage credit in low income and center city neighborhoods, thereby accelerating urban decline. Disclosure of home lending activity was intended to assist the public and policymakers in determining whether lending institutions were meeting the housing finance needs of their local communities and to facilitate enforcement of federal fair lending laws. Over the past thirty years, HMDA has evolved to cover additional elements of the mortgage lending process. The first major legislative amendments occurred in 1989; these required the disclosure of application and loan-level information for home loans, including the disposition of applications and the income, sex, and race or ethnicity of individual loan applicants. Prior to that time, HMDA disclosures were limited to summary totals of loans actually originated by census tract and roll-up categories. Analysis of the loan-level data prompted concern about the fairness of mortgage lending decisions, as the data revealed disparities in the rates of approval of loan applications across racial and ethnic lines. Since that time, HMDA data has become an important screening tool in fair lending enforcement, though it is widely recognized that risk factors, which play a major role in both underwriting and loan pricing, are not contained in it[1].

Additional changes to the Federal Reserve's Regulation C, which implements HMDA, occurred in 2002[2]. A number of significant changes were made to the reporting requirements beginning with the 2004 data, increasing the types and amount of information made available about home lending. The most significant among these was the requirement that lenders disclose pricing for higher priced loans, defined as those with annual percentage rates (APRs) above specified thresholds[3]. Policymaker goals in requiring this additional reporting were to learn more about pricing in the relatively new subprime market, in which various abusive practices had been alleged. For a review of the uses and limitations of the new HMDA pricing data for fair lending analyses, see Staten (2005).

While the relationship is inexact, APR spread reportable loan volume is often taken to be a proxy for subprime, or nonprime, lending, since subprime loans carry rates that are generally several hundred basis points higher than conventional conforming or prime loans. For example, LaCour-Little (2007) reports that the average subprime mortgage rate was about 270 basis points higher than the average conventional conforming rate for first lien home purchase loans during calendar year 2002, though increased competition may have reduced this spread in recent years[4]. A number of commentators on the HMDA data have interpreted spread reportable loans as subprime loans (see, for example, Center for Responsible Lending [2006] or Consumer Federation of America [2006]). This marks a change from the prior research practice of

[1] See Courchane, Nebhut, and Nickerson (2000) for a discussion of fair lending exam processes.
[2] See Home Mortgage Disclosure Act (12 U.S.C. §§ 2801-11), Regulation C (12 C.F.R. pt. 203), and accompanying staff commentary (12 C.F.R. pt. 203, Supp. I).
[3] The rate spread reporting threshold is 3 percentage points for a first lien loan and 5 percentage points for a second lien loan. In calculating the rate spread, the lender uses the Treasury yield for securities of a comparable maturity as of the fifteenth day of a given month. Lenders use the fifteenth day of a given month for any loan on which the interest rate was set on or after that day through the fourteenth day of the next month. The applicable date is the date the interest rate on the loan was determined, generally the rate lock date. The APR used is the one disclosed to the consumer for purposes of the Truth-in-Lending Act (Regulation Z).
[4] For example, examination of Hilltop Lending Corporation's online rate sheet on May 3, 2007 (a random selection), showed a prime rate of 6.25% for a 30-year FRM (for a borrower with FICO>700, 80% LTV, and no late payments) and a subprime rate of 8.20% for a 30-year FRM (for a borrower with a FICO=620, an 80% LTV, and up to one 90-day delinquency in the last 12 months), implying a spread of 195 basis points.

characterizing loans as subprime if they were originated by lenders whose predominant business was subprime, based on a list developed by the Department of Housing and Urban Development (HUD)[5]. Calem, Gillen and Wachter (2004) state that all studies prior to that date, including their own analysis, used the HUD list to identify subprime lending. The difficulty with the HUD list, of course, is that it fails to account for differences in the mix of prime and subprime business at many lenders. Other researchers have characterized HMDA loans for which rate spreads are reportable as "roughly equivalent to what industry sources call non-prime or subprime loans" (Apgar, Bendimerad, and Essene (2007))[6].

The volume of mortgage lending covered by HMDA is extensive, including about 8,800 lenders in both reporting years. For 2005, lenders reported information on slightly over 30 million home-loan applications, up from about 28 million applications in 2004. Federal Reserve Board economists have analyzed and reported on patterns in both the 2004 and 2005 HMDA data (Avery, Canner, and Cook [2005] and Avery, Brevoort, and Canner [2006]). In 2004, HMDA data showed that about 15.5 percent of all originated loans were rate spread reportable. By 2005, however, the percent of rate spread reportable loans had increased over ten percentage points to 26.2 percent[7]. In terms of loan counts, this amounts to an increase from about 2.2 million spread reportable loans in 2004 to about 4.1 million loans in 2005. This occurred while the total market also grew, from about 14 million loans in 2004 to almost 16 million loans in 2005.

Avery, Brevoort, and Canner (2006) identify three factors that may have produced changes in the reporting of higher-priced (i.e. spread reportable) lending: (1) changes in lender business practices; (2) changes in borrower credit risk profiles; and (3) changes in the interest rate environment. Our objective here is to further analyze these potential explanations and suggest additional factors that help explain the observed increase in reportable loans during 2005. Finally, given what is known about 2006 and a model

[5] See, for example Scheessele (2002) for an example of HUD analysis.
[6] Apgar et al (2007) analyze public HMDA data from 2004 augmented with census information and focus on racial differentials in the incidence of APR spread reportable loans as a function of origination channel, defined as credit union, regulated bank or thrift, or independent mortgage company.
[7] Avery, Brevoort, and Canner (2006), page 144.

explaining 2004-2005 patterns, we present an estimate of HMDA results that will be reported later this year[8].

The plan for the balance of the paper is as follows. In the second section we review the economic environment that existed during 2004-2005, noting major trends in the mortgage market during those years. In the third section, we describe the implications for HMDA reporting and outline the empirical analysis we will use to test those implications. The fourth section describes the data, the empirical analysis, and the results, including an estimate of 2006 results. The final section offers conclusions and further research questions.

2. The Economic Environment 2004-2005

Interest Rates, House Prices, and Household Income

Many commentators have noted the flattening of the yield curve over the course of 2004 through 2005. Figure 1A illustrates this pattern, graphing the ratio of the 10-year constant maturity Treasury to the one-month Treasury monthly. Most of the movement was caused by increases in short term rates, as the 10-year remained in a fairly tight band between 4.00-4.75% over the two year period. As a result, 30 year fixed rate prime mortgage rates moved relatively little over this period as well, fluctuating between 5.45% and 6.33%, based on the Freddie Mac Primary Mortgage Market Survey data. It was not until 2006 that prime mortgage interest consistently exceeded 6.00.

A related pattern observable in the adjustable rate segment of the mortgage market and related to the flattening of the yield curve is an increase in the initial term discount provided on these loans. The initial term discount is the difference between the initial term rate and the fully indexed rate, defined as the index plus the margin at the time of loan origination. We plot this pattern in Figure 1B. As a result, adjustable rate instruments would be assumed to experience larger increases at the time of re-set,

[8] Due to the massive volume of HMDA data, there is a six month lag from the March 1 submission date to the release of the data in September, although preliminary results for individual lenders are generally available sometime in April.

affecting APR calculation. We will come back to the topic of APR calculations for adjustable rate mortgages (ARMs) later in the paper.

Though less obvious, there appears to be some evidence that the risk premium increased over this time period as well, as shown in Figure 2. This graph depicts the spread between Moody's AAA and BAA bond yields monthly over the time period 2004-2005. To the extent that the flatter yield curve signaled greater risk of recession and market participants anticipated future housing market downturns (as indeed did occur during 2006-2007) then we might reasonably expect risk premiums to have increased in advance. Using the empirical data described later in this paper, we can construct a test to determine whether this overall increase in the market price of risk passed through to the mortgage market over this time period. To briefly preview results, we find about a 15 basis point increase in the market price of risk over this time period.

Over this same time period, house prices in the United States continued their upward trajectory, as shown in Figure 3, which depicts the Office of Federal Housing Enterprise Oversight (OFHEO) repeat sale house price index over the eight quarters of 2004-2005. Over this time period house prices, as measured by the index, increased by about 33%. We can also calculate mean and median prices from the Federal Housing Finance Board's MIRS data described later in the paper. Over the 24 month period Jan 2004 to Dec 2005, the mean house prices as reported increased from $259,000 to $309,000 and the median increased from $211,000 to $253,000, as shown in Figure 4. Of course, many metropolitan areas experienced house price growth well in excess of the national rate, however measured. Meanwhile, real median household income increased by only 1.1% in 2005 over 2004 to $46,326. As a result, indicators of housing affordability, such as the widely reported National Association of Realtors measure, showing declining affordability over this time period.

Across demographic groups, there continues to be substantial difference across racial and ethnic groups: Black real median income was $30,858; Hispanic real median income was $35,967; White Non-Hispanic real median income was $50,784, and Asian real median income was $61,094 (all income figures U.S. Census Bureau 2006).

Mortgage Market Trends

One of the most pronounced trends in the mortgage market over the 2004-2005 timeframe was the increase in Alt-A lending. Moody's (2007) reports that Alt-A securitizations, which include option ARMs and other recent product innovations, virtually doubled in 2005 versus 2004, reaching $425 billion. Based on securitized volume, Alt-A outstripping the volume of jumbos for the first time in 2004 and was more than twice total jumbo volume in 2005. Since Alt-A underwriting standards are more flexible than traditional jumbo standards, which tend to require prime quality credit and only loan amount as a variance from what would otherwise be conventional conforming underwriting standards, it seems reasonable to infer that borrowers needing nonconforming size loans increasingly switched to Alt-A over the 2004-2005 time period.

Related to this is the trend toward consolidation in the mortgage industry and the entry of new firms, especially Wall Street investment houses seeking to establish vertically integrated mortgaged-backed securities production capabilities. For example, in 2005 Lehman Brothers, Bear Stearns, and Credit Suisse were all top-ten issuers of Alt-A mortgage-backed securities. Concurrently and perhaps in part related to the accounting scandals that tarnished both firms' reputations, volume and market share for Freddie and Fannie dropped significantly, falling to about 40% versus 70% in 2003. This pattern can be readily seen in bond market aggregate statistics compiled by the Federal Reserve (graph not included in this version of the paper but available from the author on request).

A continued trend over this same time period was the growth in so-called "non-traditional" mortgage products, including interest-only and payment-option ARMs. Such products have been labeled "affordability products" by some market participants, since they allow households to borrow more relative to income by accepting reduced (and possibly negative) amortization of their mortgage debt, at least in the short run, and a greater degree of interest rate risk than would be the case with the traditional fixed-rate fully amortizing loan. For a more comprehensive review of the development of non-traditional mortgage products, see GAO (2006). GAO reports a tripling of the use of non-traditional products (as a percentage of all loan originations) over the period 2003-

2005, with the use of these products concentrated in coastal states with relatively high cost housing. GAO also reports that such products became available to wider segment of the borrowing population, including lower-income households and first-time homebuyers.

The fundamental economic reason for the growth of these products is the continued pattern of house price growth outpacing income growth. Of course, existing home owners (about 69% of all households) benefit from rising house prices and associated capital gains, so it is not the case that all households are stretching farther to afford home purchase. There is some evidence that these affordability products are in greater use among younger households; for example, a recent Wall Street Journal Online/Harris Interactive personal-finance poll indicated that younger borrowers have been more likely to use non-traditional products. For example, the poll indicated that 23 percent of 18–34 year old borrowers have an interest only product, while only 7 percent of 45–54 year old borrowers do.

According to the Mortgage Bankers Association (2007), interest only (IO) loans, with both adjustable- and fixed-rates, and payment option loans that allow some amount of negative amortization, have become a significant part of the mortgage market In the second half of 2005 and the first half of 2006, IOs accounted for about 25 percent of the dollar volume of originations. Payment option loans represent still another product innovation; typically allowing borrowers a choice of four different payments with each monthly statement. Borrowers may make fully amortizing payments calculated over a 30- or 15-year term or they may make an interest-only payment, which would not reduce the loan balance, or a minimum payment less than the interest only payment. This last choice would negatively amortize the loan, as the interest due above the minimum payment would be added to the loan balance. Typically, the maximum allowable negative amortization is capped at 110 or 115 percent of the loan's original balance, with balances higher than that level triggering a new amortization schedule requiring higher monthly payments. Hence, if initial LTV ratios are moderate, say 80%, negative equity is unlikely unless house prices actually decline, a problem increasingly evident during 2006 and later.

3. Implications for Home Mortgage Disclosure Act Reporting

HMDA spread reporting is based on comparable maturity treasury rates, yet loan pricing, generally, is not. Let us consider a very simple example of the effect of this fact on APR spread reporting, focusing on 30-year loans for simplicity's sake. If the 30 year treasury rate remained unchanged at, say, 5.00% over time, the threshold rate will be an APR of 8.00%. Mortgages, however, represent callable debt, since the borrower can prepay at any point in time, though the prepayment penalties common in subprime and some Alt-A loans are intended to discourage refinancing, at least during the first few years of the contract. Prepayment, as well as amortization itself, reduces the expected life of mortgage loans substantially. For thirty year fixed rate mortgages, the expected life is 5-10 years. For adjustable rate mortgages, it is even shorter, probably 3-5 years. For subprime and Alt-A loans it is shorter still, approximately 2-4 years. Specific contract features may further alter expected durations. For a more detailed discussion of prepayments and the duration of mortgages, see, for example Hayre (2001).

Accordingly, loan originators typically price mortgages off of the point on the yield curve corresponding to expected duration, rather than stated maturity. Hence, a subprime or Alt-A loan is generally priced based on a spread above the 2 or 3 year rate, even if the contract provides for 30 year maturity. Let us assume, to continue with the example above, that the appropriate credit spread for prime loans is 200 basis points and the approximate credit spread for riskier subprime loans is 500 basis points. The question is spread above what?

If the prime loan is priced off a 10-year treasury of, say 4.50%, the prime rate will be 6.50% and the spread to the 30-year treasury (assuming note rate equals APR for simplicity) will be 150 basis points and the loan will not be spread reportable. If the yield curve is steep, say with the two-year rate at 2.00%, then the subprime rate will be 7.00% and the subprime loan will also not be spread reportable, since it will be priced only 200 basis points (7.00% - 5.00%) over the 30 year treasury. But, on the other hand, if the yield curve is relatively flat, implying a two-year rate of, say 4.00%, then the subprime rate will be 9.00% and the subprime loan will be reportable, since the relevant 30-year benchmark of 5.00% (assumed constant here for illustration purposes) would be a full

400 basis points lower. If this scenario played out precisely over a two-year period and all loans were identical within category, then no loans would be reportable during the first year and all of the subprime loans would be reportable in the second year. Of course, reality is considerably more complex, as credit spreads may fluctuate over time and expected durations may vary based on continuously updated prepayment forecasts based on interest rate movements and other economic indicators.

A second important implication of the growth in Alt-A and non-traditional mortgage products is an increase in the volume of ARMs[9]. Because future interest rates are uncertain, calculation of the APR on an ARM requires assumptions. In particular, the APR calculation assumes that the rate on the loan will increase at its first adjustment to the fully indexed rate (the index in effect at the time of loan origination plus the margin established by the terms of the contract) and then remain unchanged for the balance of the term. We have already shown in Figure 1B that fully indexed rates on ARMs increased relative to the initial rate over the period 2004-2005.

An example may help illustrate this point. Suppose an ARM indexed to the one-year treasury rate were originated as in April 2007. The one-year Treasury rate on that date mid-month was 4.97% and, according to the Freddie Mac Primary Mortgage Market Survey, one-year ARMs originated during that month had an average starting rate of 5.45% with a margin 2.76%. Hence, to calculate the APR on the loan, one would assume that the initial one year rate would be 5.45% and that one year later the rate would increase to 7.75% (equal to the fully indexed rate of 4.97 + 2.76 at time of origination). The APR calculation further assumes the loan will be held to maturity, so one must calculate the implied yield for one year at 5.45% and 29 years at 7.75%[10]. This produces an APR of 7.53, ignoring any points or other upfront fees that might be included in the calculation.

We can see from this example that APR will tend to increase with both the index and the margin and decrease with the length of the initial (discounted) term to first reset, at least in the usual case (and in the example provided) where the initial start rate is

[9] Most (over 75%) of subprime loans are ARMs and most non-traditional products are ARMs, except for the newer 40 and 50 year fully amortized FRM.

[10] The APR is essentially the bond yield or the internal-rate-of-return (IRR) which may be defined as that rate which makes the value of the initial cash flow (loan amount less any points and fees) equal to the present value of all future payments discounted at the IRR.

discounted well below the fully indexed rate. As we turn to further empirical analyses, we will see that the growth of ARM lending over the period 2004-2005, together with the increase in the initial term discount likcly played a significant role in the growth of APR spread reportable lending.

The growth in junior lien lending, especially simultaneous close seconds over the 2004-2005 period, has already been noted. Indeed, examination of the tables contained in Avery et al (2005) and Avery et al (2006) indicates that about 422,000 additional loans secured by junior liens were spread reportable in 2005 compared to 2004. Several contract features of second liens are relevant here. First, they are typically shorter than 30 years in maturity, often 15-year; hence they will trigger reporting thresholds at lower rates, even though the reporting standard is 500 basis points, rather than 300. Second, they are typically adjustable rate. While expected durations for these loans is not readily available, it seems likely that the same factors affecting Alt-A and subprime, would have tended to make these loans relatively higher priced in 2005 compared to 2004, increasing the probability of spread reporting.

4. Data and Empirical Methodology

The data compiled for this research covers calendar years 2004-2005, as well as the first half of 2006, though we initially focus on 2004-2005. We use three distinct data sources. The first is the servicing and securitization data from LoanPerformance, a well-known commercial provider of mortgage loan data to the industry, which claims coverage of approximately 78% of the mortgage market[11]. The servicing data contains both securitized and non-securitized loans and information is available at certain aggregate levels only. The securitization data includes loan level information, but only for loans that serve as collateral for private label mortgage-backed securities (jumbo, Alt-A, and subprime); hence, Freddie and Fannie issues are not included. The LoanPerformance data sets, while broadly representative of the entire mortgage market, do not contain many HMDA data fields or the APR on the loan. Table 1 provides a

[11] LoanPerformance states that their coverage is approximately 80% of the prime market, including all Freddie and Fannie loans, and 50% of subprime market. See www.loanperformance.com for further details on this data source.

comparison the LP servicing data and its correspondence to overall HMDA data for 2004-2005. Depending on the category and whether one matches to loan counts or loan balances, my own estimate is that the LP data covers 68-75% of the total HMDA market.

The second data source is a proprietary data set assembled under the direction of the Consumer Mortgage Coalition, an industry trade group. This data set includes many, but not all, HMDA fields, including whether the loan was rate spread reportable, and important supplemental information, such as whether the loan is fixed or adjustable rate, whether it was originated directly or indirectly (e.g. through a mortgage broker), and several key risk factors such as credit score and loan-to-value ratio. The data represents a random sample of all participating lenders origination volume and includes multiple unidentified lenders. Accordingly, it is expected to be broadly representative of large volume financial institutions who were engaged in both prime and non-prime lending activity during both calendar years. As shorthand, we will refer to these two data sources as the LP data and the CMC data. Both are large data sets. In the LP data we have approximately 9.3 million loan records over the two years and in the CMC data we have approximately 385,000 loan records, including loans from the first six months of 2006.

The third data source is the previously mentioned Federal Housing Finance Board's Monthly Interest Rate Survey (MIRS) data for calendar years 2004-2006, which contains survey data on approximately 724,000 home purchase loans. The survey provides monthly information on interest rates, loan terms (including LTV), and house prices by property type, by loan type (fixed- or adjustable-rate), and lender type (savings associations, mortgage companies, commercial banks, and savings banks). To conduct this survey, the FHFB asks a sample of mortgage lenders to report the terms and conditions on all single-family, fully amortized, purchase-money, non-farm loans that they close during the last five business days of the month. The survey excludes FHA-insured and VA-guaranteed loans, multifamily loans, mobile home loans, and loans created by refinancing another mortgage. This publicly available data has been widely used by researchers in the mortgage field for many years so we will not further describe it here.

Table 1 compares the LP data to HMDA totals for the calendar years under consideration. Table 2 provides descriptive statistics for the CMC data.

Our general methodology is to determine the effect membership in particular loan categories has on the probability that the loan is spread reportable under HMDA. We perform this analysis using loan level data where we can observe the APR and whether the loan was reportable under HMDA given the interest rate environment in the particular year of origination. Concurrently, we examine the trend in particular loan categories for the entire market over the time horizon of interest, calendar years 2004 and 2005. If we know, for example, that ARMs are more likely to be reportable than FRM, then an increase in the percentage of total ARM lending in the market is likely to increase the overall level of loans with APR spread reporting. Ultimately, we will quantify those relationships using regression techniques and use the resulting equations to predict HMDA results for 2006.

But to begin, we assess changes in the risk profile of borrowers over time. If the pool of borrowers in 2005 were systematically riskier than in 2004, we would expect a higher fraction of APR spread reportable loans, given the risk-based pricing that is prevalent in the mortgage market.

Borrower Risk Profiles

Default risk in mortgage lending has been a topic of research for many years (see Vandell [1993] for a survey). Empirically, risk in mortgage lending has been shown to be related both to borrower credit (as measured, for example, by the FICO credit score) and the level of borrower equity in the property, as generally measured by the loan-to-value ratio (LTV). Indeed, many rate sheets used by lenders explicitly price on these two factors. In addition, the overall level of borrower indebtedness, as measured by the debt-to-income ratio, is also thought predictive, and borrowers with excessive levels of debt (even those with excellent credit) are often limited to subprime or Alt-A products.

Beginning with LTV, Figures 5A-5C depicts measures of loan-to-value ratios calculated for mortgage loans originated over 2004-2005, first based on the MIRS data and then based on the LP data. No obvious upward trend is apparent. If anything, average LTV appears to have declined slightly over this time period, as has the fraction of loans with LTV greater than 90%, the highest risk category.

The use of simultaneous close second mortgages (sometimes called "piggybacks") is reported to have increased during 2004 -2005. Such loans would produce effectively higher overall loan-to-value ratios, potentially not reflected in Figure 5. Accordingly, in Figure 6 we graph the percentage of loans using a simultaneous close second. Monthly fluctuations appear to vary between 25-30% of all home purchase loans, with some very slight upward trend indicated with a linear fit to the data.

Finally, we present in Figures 7 and 8 measures of borrower credit score over time, separating home purchase loans from loans for refinancing purposes. Using the LP data, we graph the percentage of newly originated loans of all types (prime and subprime) to borrowers with credit scores less than 600, 600-720, and over 720. Below 600, most borrowers would be in the subprime category; above 720 they would clearly be in the prime category, with 600-720 representing an intermediate range.

Beginning with the home purchase category shown in Figure 7, no obvious shift in the mix of borrower credit scores is apparent. All three lines are virtually flat, suggesting that the mix of borrower credit types did not change over the two year period. Borrowers in the lowest score category (under 600) consistently represent about 10% of borrowers. The picture is rather different in Figure 8, loans for refinancing. Such loans commingle cash out refinancing, considered relatively risky especially if for the purpose of debt consolidation, with relatively lower risk rate-term refinancing, which tends to be driven by interest rates.

In interpreting this data we should note, too, that spring of 2004 marked the low point in the interest rate cycle with, for example, the Freddie Mac 30-year PMMS rate reaching a low of 5.45% in March. Overall loan volume surged at this point in time. This may explain the apparent increase in high score borrowers and relative dearth of lower score borrowers at that point in time, creating the patterns noted in Figure 8.

In summary, we do not find evidence of an increase in borrower risk, as least as can be detected with our data and traditional risk measures. On the other hand, we have already noted the increase in the use of non-traditional products and some of those, notably those reduced documentation products not requiring verification of borrower income, would not be reflected in Figure 6, for example. Moreover, products that incorporate little, or negative amortization, might be characterized as riskier, per se.

Accordingly, we graph in Figure 9 the percentage of loans in which negative amortization is allowed using LP data. This line shows a sharp increase over the late 2004 and early 2005, followed by relative stabilization at around 25% of loan volume. This may be a proxy for the growth of the Alt-A segment of the market over this time period.

Origination Volume Mix Changes

We now examine the effect of the industry shift toward Alt-A loans and the mix of ARM to FRM in the market. We have already argued that a sharp increase in Alt-A lending is apparent in Figure 9. Figure 10 graphs the percentage of all loans (both prime and nonprime) that were originated as ARMs, monthly, over the 2004-2005 time period. Here we see a sharp increase from a level of about 30% in early 2004 to a level approaching 45% over much of 2004, followed by a decline to under 35% by the end of the two year period[12].

This growth of ARM usage is initially puzzling. Most of the published academic research on ARM usage has stressed the relative cost advantage of ARMs over FRMs when the yield curve is steep (Brueckner and Follain [1988], Dhillon, Shilling, and Sirmans [1989], Stanton and Wallace [1995, 1999]). These papers, however, focus on the mortgage market prior to the development of the nonprime segment, in which a significant fraction of loans are ARMs. Borrowers in the subprime category, in particular, are generally thought to be relatively less rate sensitive and the spread between FRM and ARM rates in that segment of the market tend to be smaller than in the prime market. If nonprime lending, including Alt-A, garnered a higher market share over the course of the time period studied and if a disproportionate fraction of nonprime loans are ARMs, then the ARM share pattern observed makes sense. Moreover, the pattern observed may reflect a reaction to the movement of FRM rates over this time period, which initially increased, but then fell.

[12] We note in passing that former Federal Reserve Chairman Alan Greenspan made remarks that were widely construed as endorsing the use of ARMs during a speech given on February 23, 2004.

Effect of the Yield Curve, Risk, and Other Economic Factors

We begin this discussion with a simple analysis of the effect of the yield curve on rate spread reporting, ignoring all other factors, including the question of whether the comparable maturity treasuries used are appropriate benchmarks. We follow this simple, mechanical approach with a more comprehensive regression analysis, which takes into account the mix of loan volume and potential changes in risk factors across loan segments. Finally, we present a separate analysis of the change in the market price of risk over time. For all three analyses, we employ the CMC data.

The most direct way to consider the effect of the yield curve on APR spread reporting in 2005 is to ask the question: if the same loan were originated under the 2004 yield curve environment, would the loan have been reportable? To answer this question, we simply load the 2004 yield curve data (the comparable maturity table provided by the FFIEC for calendar year 2004) onto the 2005 data and re-calculate the APR spread for each loan and whether that re-calculated spread would have been reportable under HMDA. For example, would a loan with a 30-year term and APR of 7.75 originated on February 15, 2005 have been reportable had it been originated February 15, 2004? In this example, the 30-year comparable maturity rate was 4.92% in Feb 2004 so a loan with an APR of 7.75 would not be reportable, since its rate spread is $7.75 - 4.92 = 2.83 < 3.00$. In contrast, as of Feb 2005, the 30-year comparable maturity rate was 4.55%, so a loan with an APR of 7.75% would be reportable, since $7.75 - 4.55 = 3.20 > 3.00$.

Results of repeating this process for all loans in the CMC sample are shown in Table 3A[13]. Overall, 23.2% of all loans would have been reportable, had the 2004 yield curve applied, rather than 26.0% actually reported. This difference (of 2.8 percentage points) is somewhat higher than the estimate offered by Avery, Brevoort, and Canner (2006) of 2.0 percentage points. To explain the source of the difference, we note that Avery et al had to assume that all reportable loans are 30 year term since loan term is not a required data element in HMDA. In fact, it appears that about 25% of HMDA spread reportable loans are, in fact, shorter in term than 30 years, as shown in Table 3B.

[13] For simplicity, we use only standard maturities (5, 10, 15, 20, 25, and 30 year) for this exercise. Collectively, these account for over 99% of all loans in the CMC data.

Returning to Table 3A, we can repeat the process to isolate the effect of the yield curve on various loan types: ARM versus FRM, high credit score versus low credit score, etc. Results show considerable variation in the effect of the yield curve, with the greatest effect (5.6 percentage points) on low credit score loans (defined as FICO less than or equal to 620) and the smallest effect on junior liens (0.1 percentage points). Since any individual lender will have its own mix of loan types and the yield curve appears to vary in its effect depending on loan type, it will be hard to generalize on the overall effect of yield curve for any individual lender and interpretation of an increase, or decrease, in 2005 over 2004 will be difficult.

Next, we employ a regression approach using the CMC data to assess the effect of the yield curve, risk, and other economic factors on whether a loan is spread-reportable under HMDA. The technique is the well-known logit model in which the dependent variable is binary, equal to one, if loan is HMDA spread reportable and zero otherwise. We control both for broad categories of loan type and specific characteristics of the loan itself. Loan-specific characteristics include loan term (since APR spread reporting is based off of comparable maturity treasury) and loan amount (to account for the tendency of smaller loans to be priced slightly higher to reflect the economies of scale in loan origination). We also control for the slope of the yield curve at the time of loan origination, using the metric shown in Figure 1.

As previously noted, descriptive statistics for the two years are shown in Table 2. Average loan size is $198,000 in 2004 and $207,000 in 2005. These values are slightly higher than the mean loan sizes for all HMDA loans implied by Table 1[14]. All major categories are represented, though less than 10% of the sample is in non-owner occupied, government-insured, manufactured housing, home improvement, or junior liens categories. A little more than half of all loans are for refinancing purposes in each year. A little less than one third of all loans were originated through indirect, wholesale channels, which include mortgage brokers, certain correspondent lending relationships, builder programs and the like.

[14] Average loan size for home purchase loans reported under HMDA was $179,000 in 2004 and $187,000 in 2005 (Table 1).

Since the incidence of reportable loans was lower in the sample compared to overall HMDA levels, non-reportable loans were randomly discarded so as to produce an incidence of reportable loans approximately equivalent to that in the aggregate HMDA data, as reported by Avery, Brevoort, and Canner (2006)[15]. After deletion of outliers and missing values and re-sampling to match aggregate HMDA patterns, the final data set consists of 126,571 loans about equally divided between 2004 and 2005 originations. As mentioned, a little less than one-third of these loans were originated through indirect channels. In such cases, a third party (such as a mortgage broker) sets the pricing for the loan while the lender funds and closes it.[16] Since a third party is setting the pricing on these loans, it seems appropriate to analyze these separately. Figure 12 depicts the aggregate growth of spread reportable loans volume over the two year time period, calculating percentages from the CMC data.

Our overall objective is to determine what factors are most important in determining whether a loan is HMDA spread reportable in each of the two years and to what extent there was a real increase in 2005, after controlling for those factors. To do this, we estimate six logistic regressions dividing the sample into the two origination years and whether the loan was originated through wholesale or retail channels. Table 4 shows results, with 4A using retail originations and 4B using wholesale originations. Results are highly consistent across sub-samples and measures of concordance are very high (over .90), suggesting we have been successful in capturing the main factors that determine whether a loan is HMDA spread reportable. In the vast majority of cases, estimates are highly statistically significant[17].

Reviewing results, we first note that larger loans are less likely to be HMDA spread reportable. This fact alone helps explain the differential levels of spread reporting in the public HMDA data across racial and ethnic groups. Lower income households will tend to demand smaller loans and those loans will be more likely to be spread-reportable,

[15] This procedure is equivalent to over-sampling the event of interest, a common approach in logit modeling. Resulting slope coefficients, except for the intercept, are unbiased and a standard method for correcting the intercept is available (Maddala [1983], page 91).
[16] Loans closed by a third party and subsequently purchased by a lender are not subject to APR spread price reporting requirements.
[17] Manufactured housing is not statistically significant in 2004 for retail originations and government-insured is not statistically significant in 2004 for wholesale originations. The year 2005 indicator is not statistically significant in retail originations.

other factors held constant. Moreover, as we have seen, race/ethnicity is correlated with income, with Black and Hispanic borrowers having significantly lower incomes and Asian borrowers have significantly higher incomes, relative to Non-Hispanic Whites.

Turning to the interest rate situation, the sign of the coefficient on the slope of the yield curve is negative, implying that a steeper yield curve makes loans less likely to be reportable other factors held constant. This result is consistent across origination channels and year of origination, suggesting yield curve movements play an important role both within, and across, origination years. Short term loans are also more likely to be reportable, consistent with the lower thresholds resulting from use of shorter comparable maturity treasuries.

Loans on non-owner-occupied housing, manufactured housing, for refinancing or home improvement purposes are all relatively more likely to be reportable. Focusing on the key risk factors of FICO and LTV, loans with higher FICO scores are less likely to be reportable and loans with higher LTVs are more likely to be reportable. Finally, adjustable rate loans are significantly more likely to be reportable, after controlling for other factors. This pattern persists across both years. This is consistent with our story about the effect of the assumptions required simply to compute the APR for an adjustable rate instruments. The one result that is not consistent with expectations is second liens, which appear to be less likely to be reportable compared to first liens[18].

In the third specification of the model we continue to segment by origination channel but combine the two years of data and add a dummy variable for an origination in calendar year 2005. The sign and statistical significance of this variable will tell us whether reportable loans increased in 2005, after controlling for the mix of loan types, risk characteristics, and yield curve movements. While the sign of the coefficient on the year 2005 origination indicator variable is positive in both cases, it is not statistically significant in 2005 for retail originations, whereas it is statistically significant for wholesale originations. From this we may infer that all of the real growth in reportable loans in 2005 over 2004 was attributable to wholesale origination, after controlling for risk and other economic factors, including the yield curve slope.

[18] Examination of credit score distributions by lien status indicates that second lien borrowers had slightly higher credit scores that first lien borrowers, which may help explain this result. Another possibility is that the high correlation between lien status and loan term swamps any independent junior lien effect.

Finally, we examine the risk-adjusted spread over time, utilizing more appropriate treasury rates that are intended to approximate lender expectations about expected duration. In particular, we use the ten year treasury for all fixed rate loans; the five year treasury for adjustable ratc loans to borrowers with credit scores higher than 620 and for all junior liens; and the two-year rate for all loans to borrowers with credit scores less than or equal to 620. Given thcse more relevant risk-free rates, we can compute an adjusted risk spread equal to the APR less the relevant rate.

In Table 5, we regress the adjusted spread on the set of risk factors available in the CMC data set, including an indicator variable for loan origination in calendar year 2005. The value of the parameter estimate for the year 2005 dummy should indicate the average increase in the market price of risk over the two-year period. In addition, we can generate the average predicted values for each month of 2004-2005 to observe the pattern in this adjusted risk spread measure. We plot those values in Figure 13.

Turning first to the regression, signs and magnitudes of coefficients seem quite reasonable. Loan amount has a negative sign, indicating that larger loans rcquire smaller risk spreads. Second liens carry risk spreads that are about 176 basis points higher than first liens. Non-owner occupied properties carry premiums of 32 basis points and manufactured housing premiums of 48 basis points. The risk spread increases with LTV and decreases with borrower credit score. ARMs carry risk premiums that are 71 basis points higher than FRM. Loans for refinancing carry risk spreads about 28 basis points higher and home improvement loans spreads about 73 basis points higher than the hold-out category of home purchase loans. In contrast, government insured loans carry risk spreads about 71 basis points lower, consistent with the insurance guarantee provided by FHA or other governmental entities. Model fit is reasonably good, with an Adj-Rsq value of .58.

Finally, and of particular interest here, loans originated in calendar year 2005 carry a risk spread about 15 basis points higher, compared to loans originated in 2004. The implication of this finding of an increase in the market price of risk is that even had the mix of loans had not changed at all in 2005 versus 2004, the higher overall pricing of risk would have increased the number of loans subject to HMDA reporting. Figure 13 plots this relationship over time based on mean values in the adjusted spread and the 15 basis point movement is evident here, too.

Robustness Tests and Other Econometric Issues

To ensure the robustness of the regression results reported above, a number of tests were conducted. Among these were redefining the slope of the yield curve to use different maturity points and using the difference rather than the ratio of the yields, re-running the models presented by lien type, restricting the samples to specific maturities (e.g. 30-year loans only), an altering the random selection algorithm to produce distinct comparator groups of loans that are not spread reportable. Results were highly consistent across all of these tests, suggesting that overall results are robust. These robustness tests are not reported here in the interest of brevity but may be obtained from the author by request.

Another econometric issue is that ARM loan choice is endogenous, meaning that borrowers choose ARMs over FRMs, at least in part, because of the interest rate situation, hence, it may not be appropriate to include an indicator for ARM as a predictive variable in the logistic regression models. To address this issue, one may estimate a separate model of ARM choice (which may be done using either the CMC or MIRS data) and include the predicted value, rather than the actual value, in the model. Results (also not reported) indicate that loan amount, geography, and the level of the FRM rate are all predictive of ARM choice and that inclusion of a predicted value, in place of the actual value, does not materially affect overall model results. Again, these results are available from the author by request.

Geographic Variation in Key Factors

Avery, Brevoort, and Canner (2006) note the wide variation in the percentage of loans that are spread reportable by geographic area and attribute this both to variation in housing costs and credit scores across regions of the country. In this section, we help explain this finding further by identifying the geographic variation in ARM volume and its relationship to house prices. Since ARMs are much more likely to be spread reportable, it follows that geographic areas with larger percentages of ARM loans will tend to have higher fractions of loans that are spread reportable, other factors held constant. ARM percentage can also be shown to be affected by the level of house prices.

Figure 11 depicts the geographic variation in ARM volume as calculated from the MIRS data for each of the two calendar years. California is prominent among states with over 50% of its home purchase loans estimated to be ARMs. In general, states with higher priced housing tend to have a greater percentage of ARMs. Broadly, states on the East and West Coast have higher percentage of ARMs as compared to Midwestern and Southern states. The percentage of home purchase loans that were ARMs in 2004 and the percentage in 2005 are highly correlated, with a bivariate correlation of roughly 0.9. Similar geographic patterns would be evident for the use of non-traditional products, such as option-ARMs, consistent with results reported by GAO (2006).

Implications for 2006 HMDA Results

Given volume and mix forecasts for 2006 and the relationships modeled previously, we can simulate likely HMDA results for 2006. During 2006, indications are that the total volume of mortgage loans should total roughly 13.5 million and $2.6 trillion dollars. This will represent a decrease in the total number of loans originated from about 15.6 million during calendar year 2005.

Using the coefficients from the logit model reported in Table 4 together with assumptions about average size and mix of volume in 2006, we can generate predicted probabilities of HMDA spread reporting, which translates into frequencies when applied to market segment totals. For example, if the probability of an ARM loan to a borrower with a credit score of 620 and a loan size of $150,000 is 0.5, then we can infer that about 50% of all such loans will be spread reportable in 2006. Continuing with this process, segment by segment and summing totals we can develop an estimate of the total number of loans likely to be reportable during 2006. For convenience and comparison to Avery et al (2006), we group loans into the major HMDA reporting categories: conventional first liens for home purchase; conventional junior liens for home purchase; conventional first liens for refinancing, and so on. For each major category, we make assumptions about average loan size, average fico score, average LTV, mix of ARM versus FRM, and retail versus wholesale origination. These assumptions are generally based on empirical means from the CMC data for that particular category of loans. Given these assumptions, we can employ the coefficients from Table 4 to generate predicted probabilities for each major category of loan. For purposes of these calculations we assume the yield curve was flat over the course of 2006, which it very nearly was, averaging over the 12 months.

Results appear in Table 6. Overall we forecast a continued increase in the percentage of loans that are HMDA spread reportable, though a much smaller increase than the increase in 2005 versus 2004. I estimate that 28.3% of all loans originated during calendar year 2006 will be spread reportable under HMDA.

5. Conclusions

We have seen that a variety of factors affected the increase in the level of APR spread reporting during 2005 over 2004. First, the yield curve flattening produced changes in the reported triggers across loan types, with the segments of the mortgage market that are most rapidly growing the most affected. Both Alt-A and adjustable rate mortgages fall into this category. Moreover, junior lien financing, particularly simultaneous-close second mortgages used to stretch affordability on home purchase transaction may have played a major role, though regression results did not show that junior liens were more likely to be spread reportable.

Overall, one might characterize this trend as a change in borrower product choice resulting in a change in the mix of loan types, rather than a change in lender behavior. Of course, to the extent product choice is driven by lender pricing and marketing strategies, one might also characterize this as a change in lender behavior. We noted, too, that new lenders became involved in the market during 2005, especially in the fast growing Alt-A segment, so the organizational structure of the primary mortgage market played a role here, too. We also estimated that there was an increase in the market price of risk in the amount of about 15 basis points in 2005 compared to 2004, which would have increased the price of mortgage credit to all borrowers over this time period.

In contrast, we did not find evidence that borrower risk profiles were substantially changing over this time period, except to some extent with the growth in simultaneous-close second mortgages, and the shift toward inherently riskier products such as interest-only and payment-option ARMs, particularly in higher cost housing markets. Affordability issues, however, appear to have mainly affected first-time home buyers. Households with existing home equity benefited from the run-up in house prices and appear to have been able to fund large down payments for trade-up housing with those gains, keeping average loan-to-value ratios within normal ranges. Recent house price declines will tend to affect such households to a lesser extent so the increase in defaults recently observed in the market is, unfortunately, likely to be concentrated among those households who had to stretch the farthest in order to achieve home ownership.

The regression results presented here indicate that the principal factors affecting HMDA spread reporting in both 2004 and 2005 were loan size, term, purpose, property type, loan type (especially whether the loan was an ARM), the key risk factors of credit score and LTV, and the slope of the yield curve. In fact, after controlling for all of these factors, there was no statistically significant increase in the probability of a loan being spread reportable during 2005 for loans originated directly by lenders. For loans originated through indirect, wholesale channels, however, there was a statistically significant increase in the probability of a loan being reportable during 2005. Given economic trends during 2006 and application of the model, we forecast a continuation of the growth in percentage of loans that are spread reportable to about 28% of all loans when full year results are released later in 2007.

Policymakers sought to better understand higher-priced mortgage lending when they implemented the HMDA price reporting standards that took effect in 2004. Unfortunately, a wide range of economic factors affect whether loans exceed the reporting thresholds and these factors are not constant over time. As a result, it is easy to misinterpret patterns in the data over time and incorrect inferences may be drawn when those economic factors are not fully taken into consideration.

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Figure 1A: Change in the Yield Curve: 2004 - 2005

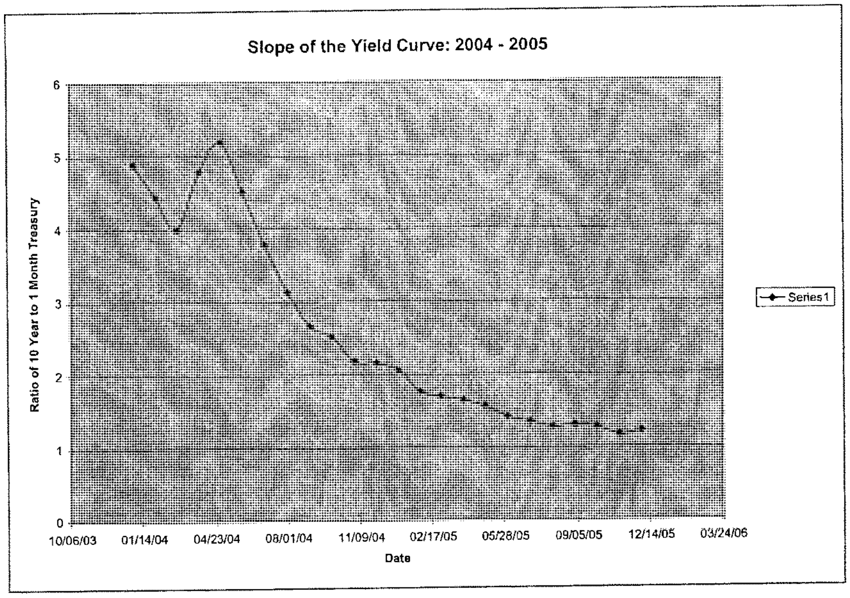

Figure 1B: Increase in the Initial Discount on Adjustable Rate Mortgages

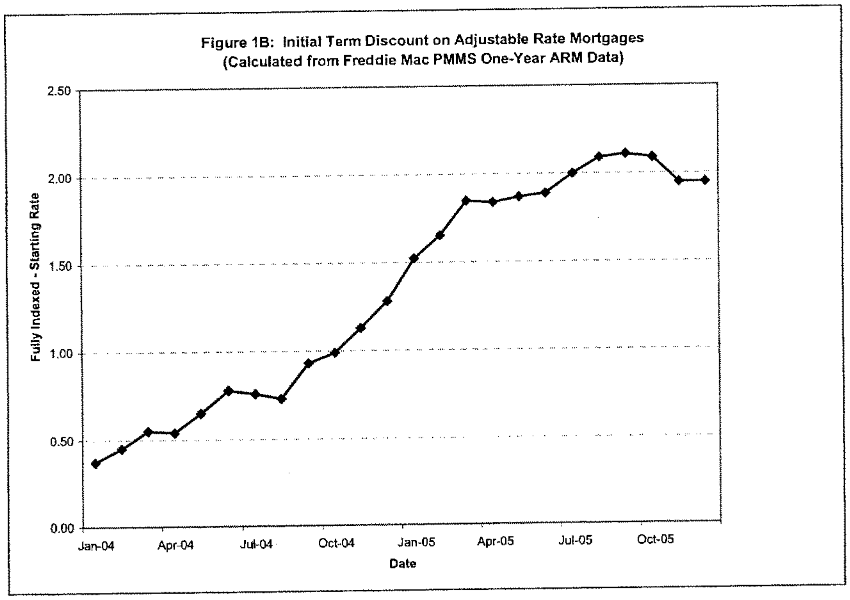

Figure 2: Change in Risk Premium 2004 - 2005

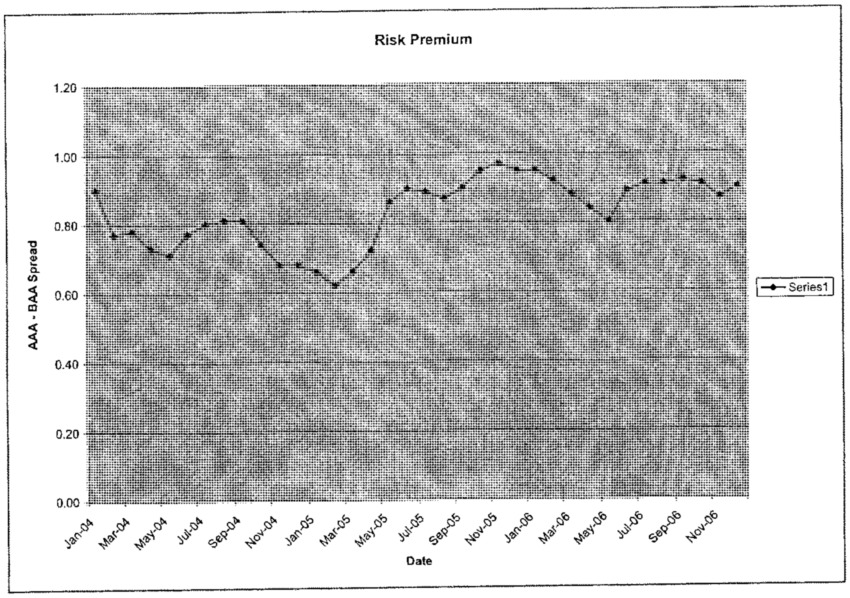

Figure 3: National Trend in House Prices: 2004 -2005

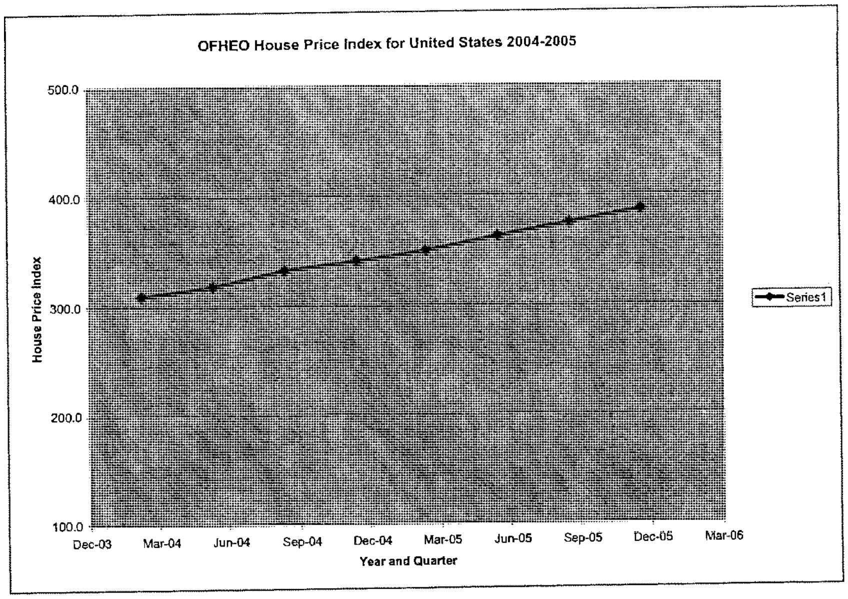

Figure 4: Mean and Median House Prices: 2004 -2005 (Source: MIRS Data)

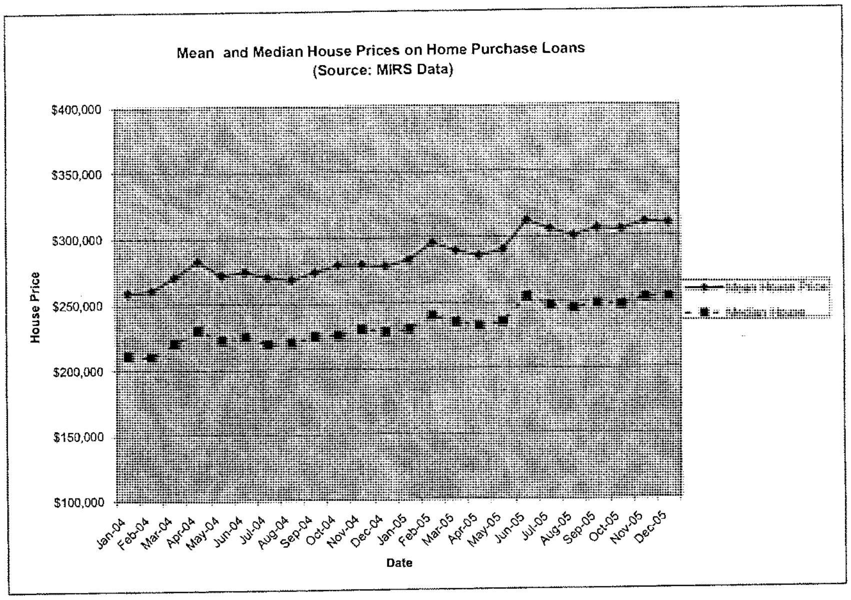

Figure 5A: Mean Home Purchase Loan LTV: 2004-2005 (MIRS Data)

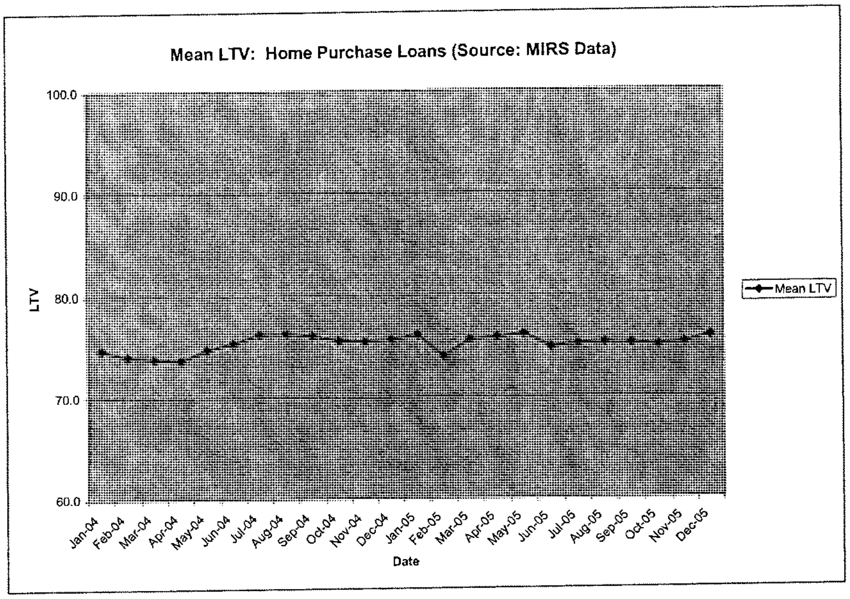

Figure 5B: Percentage of Home Purchase Loan with LTV > 90: 2004-2005

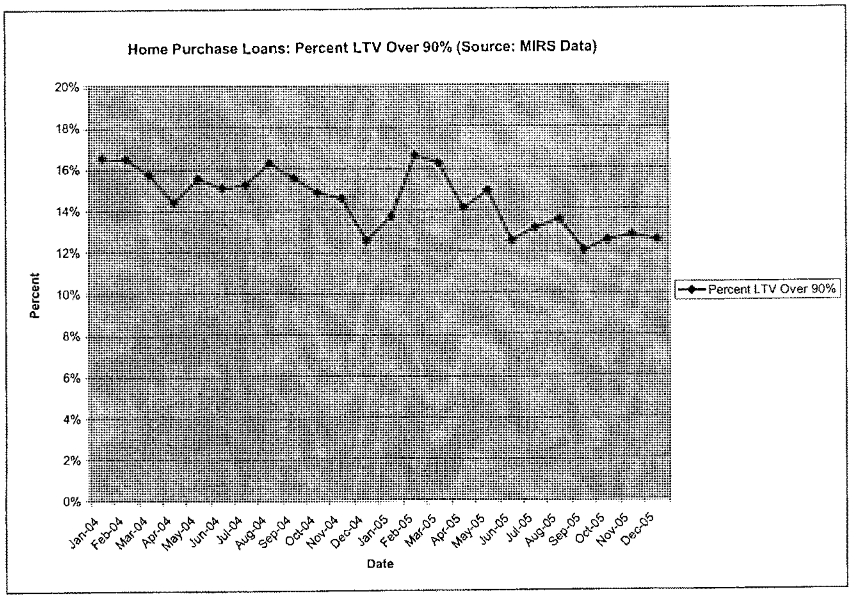

Figure 5C: Percentage of All Loans Originated with LTV > 90% (LP Data)

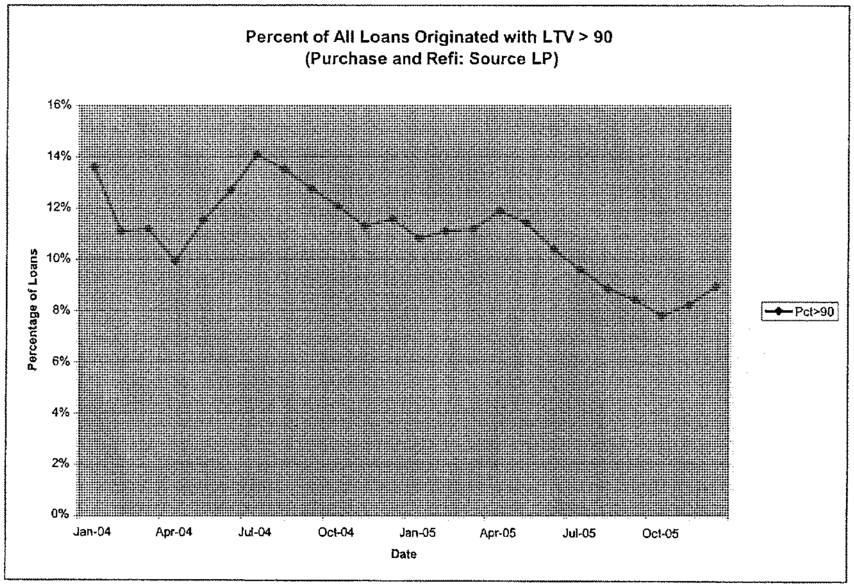

Figure 6: Use of Seconds with Home Purchase Loans: 2004-2005

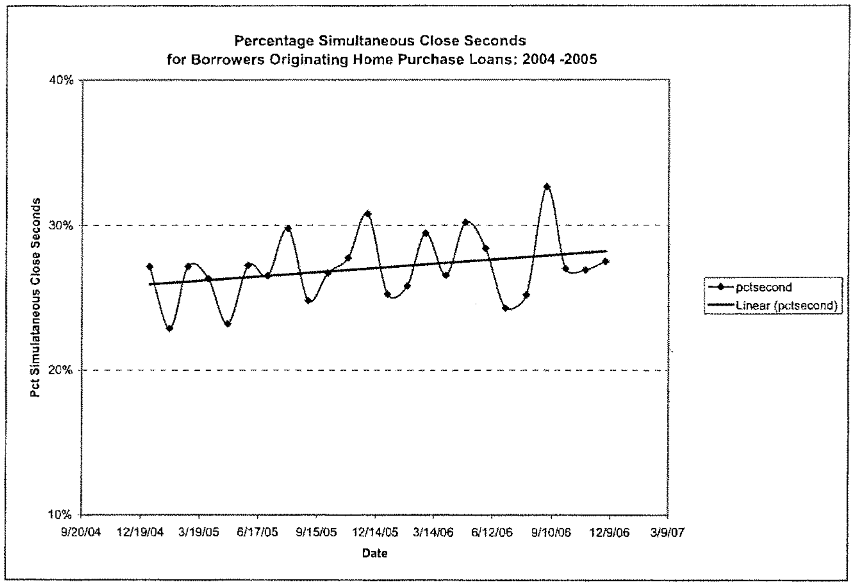

Figure 7: Distribution of FICO Scores for Purchase Loans Originated 2004-2005

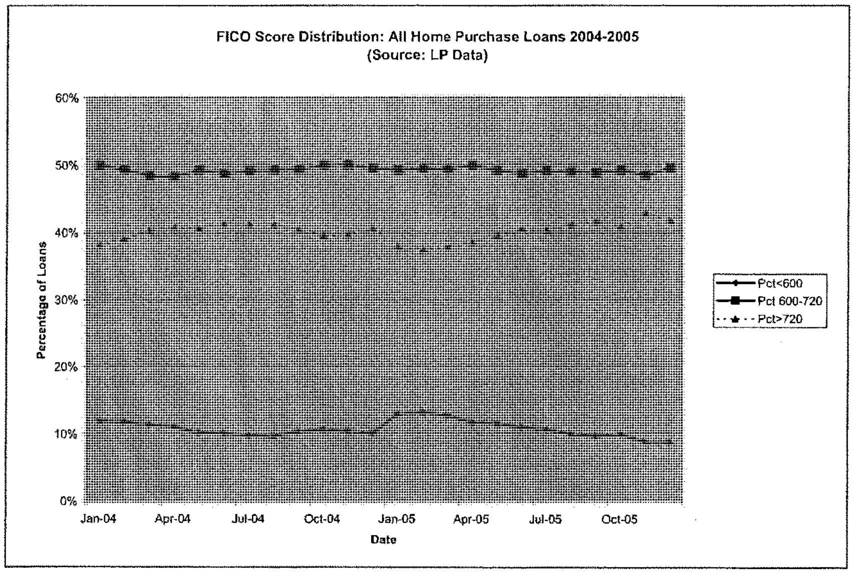

Figure 8: Distribution of FICO Scores for Refinancing Loans Originated 2004-2005

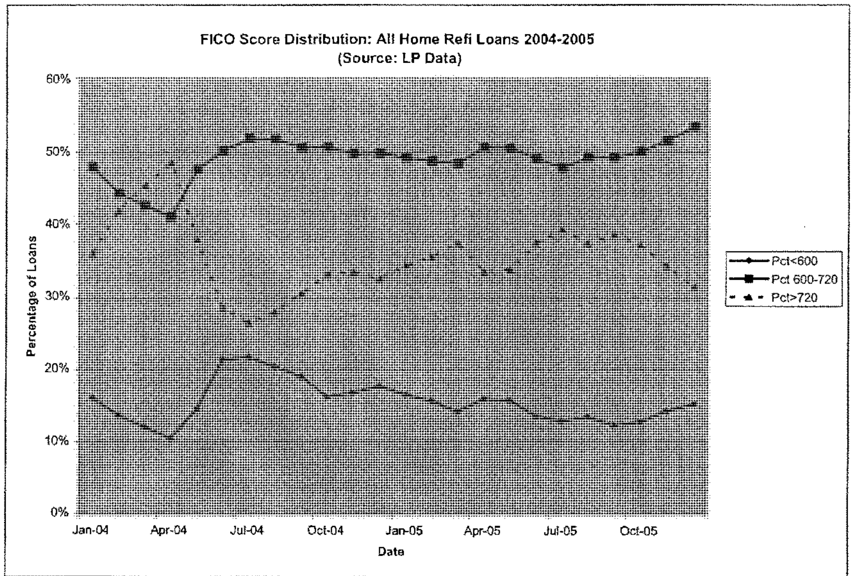

Figure 9: Loans Originated Allowing Negative Amortization: 2004-2005

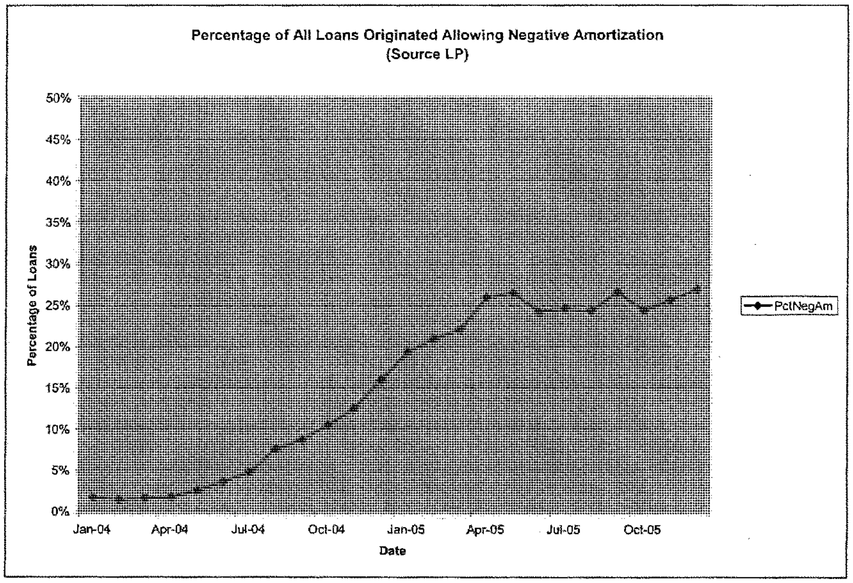

Figure 10: Percentage of All Loans Originated That Are ARMS: 2004-2005

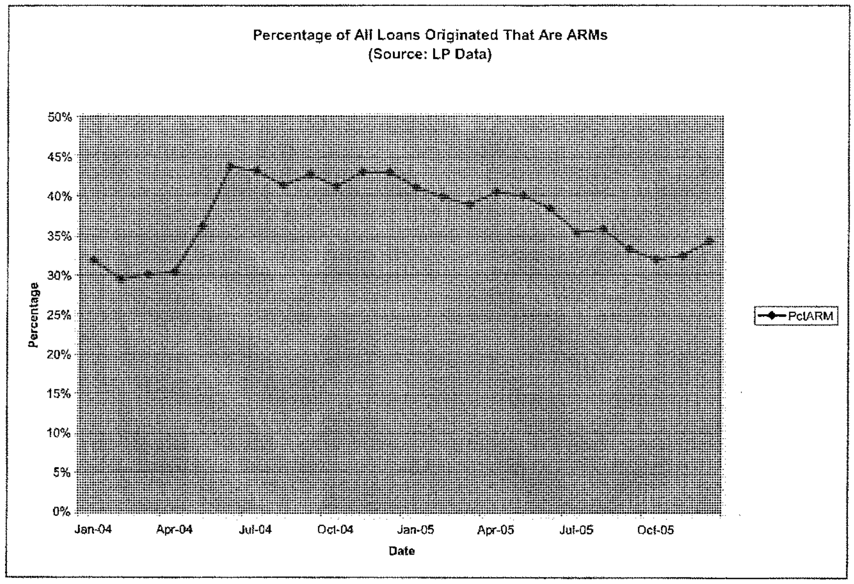

Figure 11A: Geographic Variation in ARM Volume: 2004

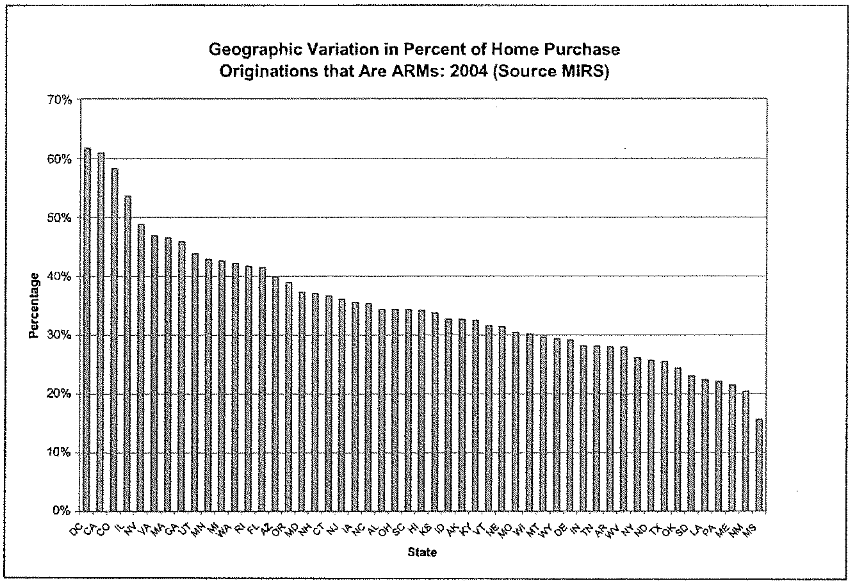

Figure 11B: Geographic Variation in ARM Volume: 2005

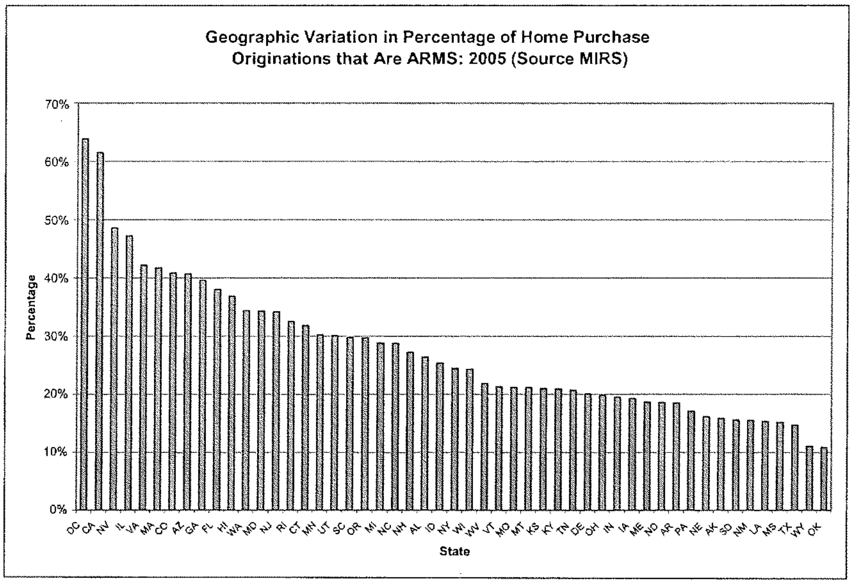

Figure 12: Growth of Spread Reportable Volume 2004-2005 (Source: CMC Data)

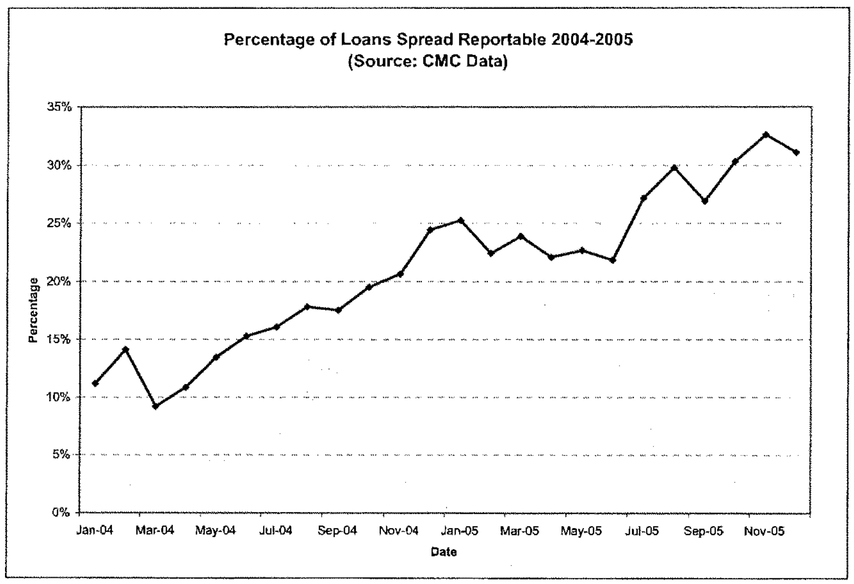

Figure 13: Trend in Average Risk Adjusted Spread: 2004-2005

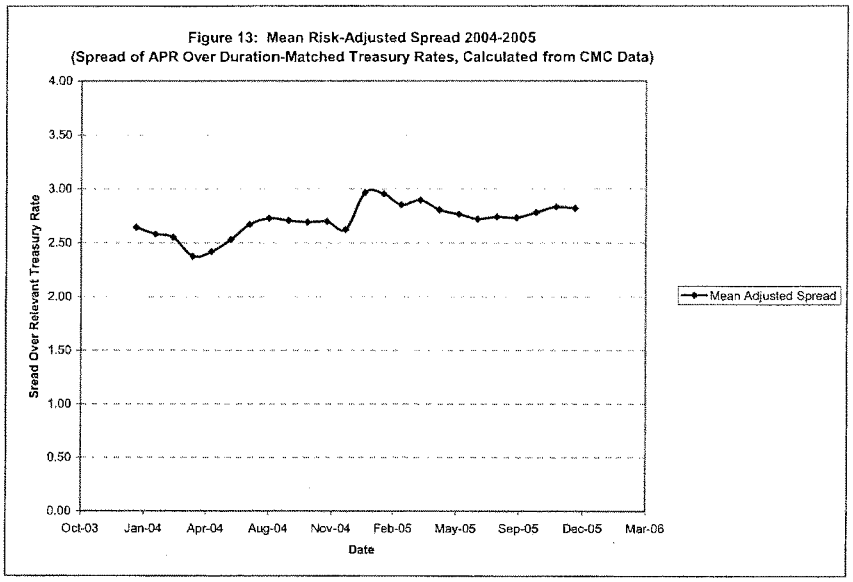

Table 1: LP Servicing Dataset Compared to Aggregate HMDA Data: 2004-2005

Loan Category			2004	2005
Purchase	Sum of Total Count	HMDA	6,452,860	7,404,202
		LP-Serv	4,496,691	4,816,533
		[HMDA - LP-Serv]	1,956,169	2,587,669
		Percent Difference	30%	35%
	Sum of Total Bal	HMDA	$1,154,349,288,000	$1,381,992,788,000
		LP-Serv	$820,465,687,946	$946,042,864,546
		[HMDA - LP-Serv]	$333,883,600,054	$435,949,923,454
		Percent Difference	29%	32%
Purchase Sum of Total Count			12,905,720	14,808,404
Purchase Sum of Total Bal			$2,308,698,576,000	$2,763,985,576,000
Refi	Sum of Total Count	HMDA	7,606,211	7,121,455
		LP-Serv	5,513,571	4,650,349
		[HMDA - LP-Serv]	2,092,640	2,471,106
		Percent Difference	28%	35%
	Sum of Total Bal	HMDA	$1,340,447,044,000	$1,401,667,305,000
		LP-Serv	$1,007,227,615,395	$969,274,959,151
		[HMDA - LP-Serv]	$333,219,428,605	$432,392,345,849
		Percent Difference	25%	31%
Refi Sum of Total Count			15,212,422	14,242,910
Refi Sum of Total Bal			$2,680,894,088,000	$2,803,334,610,000

Table 2: Descriptive Statistics: CMC Data 2004 and 2005 Originations
(Reportable Loans Over-Sampled to Approximate HMDA Proportions)

Descriptive Statistics	2004				2005		
	Originations				Originations		
Variable	N	MEAN	STD		N	MEAN	STD
Loan is Spread Reportable	63101	0.15	0.36		63470	0.26	0.44
Term (in years)	63101	26.3	6.67		63470	26.7	6.58
Loan Amount (thousands)	63101	197.7	181.5		63470	207.4	195.8
Junior Lien	63101	0.03	0.18		63470	0.05	0.23
Not owner occupied	63101	0.08	0.28		63470	0.10	0.30
Manufactured housing	63101	0.02	0.13		63470	0.01	0.11
FICO credit score	60573	699	72		62384	697	74
Loan to value ratio	63101	76.9	18.5		63470	77.1	18.5
Adjustable rate (ARM)	63101	0.36	0.48		63470	0.38	0.48
Refinancing	63101	0.53	0.50		63470	0.51	0.50
Home Improvement	63101	0.03	0.17		63470	0.05	0.21
Government	63101	0.07	0.25		63470	0.05	0.21
Wholesale origination	63101	0.29	0.46		63470	0.27	0.44
Slope of yield curve	63101	3.85	0.98		63470	1.52	0.35

Table 3A: Effect of the Yield Curve on HMDA Spread Reporting 2004-2005

Table 3A											
Yield Curve Simulation											
		Retail	Wholesale	ARM	FRM	FICO	FICO	LTV	FICO<620	Loan	Second
	Total	Only	Only	Only	Only	<620	620-720	>90	& LTV>90	<$100k	Liens
%Spread Reportable in 2005	26.0	25.0	28.8	45.5	14.4	70.0	34.3	30.6	46.0	40.7	22.0
%Reportable Under 2004 Yield Curve	23.2	22.5	25.0	40.8	12.7	64.4	29.7	27.1	41.6	37.8	21.9
Difference	2.8	2.4	3.9	4.7	1.7	5.6	4.6	3.6	4.5	2.9	0.1
Notes											
Comparable maturities for calendar year 2004 are used to											
recalculate the APR spread for											
loans originated in 2005											
Difference measures pure effect											
of interest rate changes on											
Reporting during 2005											

Table 3B: Distribution of Loan Term for HMDA Reportable Loans 2004-2005 (CMC Data)

Table 3B		
Distribution of Loan Term		
All Spread Reportable Loans (Source: CMC Data)		
	Percentile	Term in Years
	90%	30
	75%	30
	50%	30
	25%	20
	10%	15
	5%	10
	1%	6
	0%	1

Table 4: Logistic Regressions: Dependent Variable is Loan is Spread Reportable (Retail Originations)

Table 4A										
Logistic Regression							Both Years		
	2004	Retail		2005	Retail		Combined		
	Parm Est	Std Error	Chi-Sq	Parm Est	Std Error	Chi-Sq	Parm Est	Std Error	Chi-Sq
Intercept	12.13	0.27	2,020.5	13.47	0.25	2,969.1	11.79	0.18	4,310.8
Loan Amount	-0.01	0.00	1,439.7	-0.01	0.00	1,445.8	-0.01	0.00	2,737.8
Term <10	2.98	0.09	1,151.6	1.92	0.07	713.2	2.36	0.05	1,857.7
Term 10-20	1.83	0.06	1,046.0	1.20	0.05	632.7	1.45	0.04	1,652.2
Second Lien	-1.69	0.09	328.0	-1.74	0.07	612.6	-1.65	0.06	900.2
Not Owner Occ	0.35	0.08	17.3	1.17	0.06	414.8	0.90	0.05	376.7
Manf Housing	0.17	0.20	0.8	0.49	0.15	11.1	0.28	0.12	5.6
Fico	-0.02	0.00	4,195.2	-0.02	0.00	5,760.6	-0.02	0.00	10,120.8
LTV	0.03	0.00	568.2	0.04	0.00	1,488.4	0.04	0.00	2,024.3
ARM	2.47	0.05	2,402.2	1.88	0.04	2,273.7	2.06	0.03	4,621.8
Refi	1.16	0.05	451.9	1.26	0.04	861.0	1.20	0.03	1,310.7
Home Imp	2.01	0.10	424.8	1.99	0.07	725.1	1.97	0.06	1,152.3
Government	-5.11	0.35	209.7	-4.09	0.18	502.6	-4.35	0.16	736.8
Yield Curve Slope	-0.37	0.02	344.9	-1.74	0.07	678.5	-0.47	0.02	645.1
Year2005							0.07	0.05	2.1
R-Square	0.43			0.46			0.44		
Max-rescaled Rsq	0.71			0.68			0.68		
c-statistic	0.96			0.94			0.95		

Table 4: Logistic Regressions: Dependent Variable is Loan is Spread Reportable (Wholesale Originations)

Table 4B									
Logisitc Regression							Both Years		
	2004	Wholesale		2005	Wholesale		Combined		
	Parm Est	Std Error	Chi-Sq	Parm Est	Std Error	Chi-Sq	Parm Est	Std Error	Chi-Sq
Intercept	16.20	0.55	861.5	15.98	0.44	1335.3	12.54	0.31	1,608.1
Loan Amount	-0.01	0.00	467.4	-0.01	0.00	690.1	-0.01	0.00	957.9
Term<10	1.57	0.50	9.7	0.95	0.54	3.1	1.29	0.37	12.3
Term 10-20	0.72	0.11	41.4	0.64	0.10	37.6	0.71	0.07	93.0
Second Lien	NA	NA	NA	NA	NA	NA	NA	NA	NA
Not Owner Occ	1.346	0.119	127.9	1.728	0.077	508.1	1.530	0.061	624.0
Manf Housing	0.599	0.156	14.8	0.484	0.179	7.4	0.703	0.115	37.2
Fico	-0.029	0.001	1379.5	-0.024	0.001	2048.0	-0.024	0.000	3,587.4
LTV	0.042	0.003	182.6	0.046	0.002	465.2	0.041	0.002	590.0
ARM	0.613	0.084	53.3	1.896	0.060	1007.5	1.371	0.046	893.3
Refi	0.279	0.089	9.8	0.291	0.062	22.0	0.228	0.049	22.0
Home Imp	0.765	0.315	5.9	0.706	0.179	15.5	0.671	0.151	19.8
Government	-20.371	199.000	0.0	-6.090	0.524	135.1	-7.054	0.534	174.4
Yield Curve Slope	-0.410	0.036	131.8	-3.150	0.115	757.0	-0.573	0.032	320.0
Year2005							0.887	0.078	128.4
R-Square	0.30			0.48			0.41		
Max-rescaled Rsq	0.62			0.68			0.65		
c-statistic	0.96			0.94			0.94		

Notes:
*There were no second loans originated through wholesale channels, so this parameter cannot be estimated.

Table 5: Test of Whether Risk-Adjusted Spread Increased in 2005

Table 5	OLS Model of Adjusted Spread			
		Parameter	Standard	
	Variable	Estimate	Error	T-statistic
	Intercept	11.46	0.0425	269.4
	Loan Amount	-0.002	0.00002	-83.8
	Second Lien	1.76	0.0168	104.6
	Not Owner Occupied	0.32	0.0112	28.6
	Manufactured Housing	0.48	0.0267	17.9
	Fico Score	-0.01	0.0001	-274.4
	Loan to Value Ratio	0.01	0.0002	35.0
	Loan is ARM	0.71	0.0073	98.1
	Refinancing Purpose	0.28	0.0075	37.8
	Home Improvement Purpose	0.73	0.0180	40.5
	Government-Insured Loan	-0.71	0.0161	-44.3
	Loan Originated in 2005	0.15	0.0064	24.0
	Notes		Adj Rsq=	0.58
	Adjusted spread is calculated		Root MSE	1.12
	by subtracting duration matched		N=	122,953
	treasury rate from APR			
	For all FRM, 10 year treasury			
	For Prime ARM, 5 year treasury			
	For FICO<620, 2 year treasury			
	For all second liens, 5 year treasury			

Table 6: Estimate of 2006 HMDA Results

Table 6					Estimated
	2005 Count	2006 Est	Prob Reportable		NumReportable
Home Purchase					
Conventional					
First lien	4,399,445	4,628,766	0.25		1,157,192
Junior lien	1,215,902	1,480,565	0.45		666,254
					-
Government					-
First Lien	406,618	380,913	0.04		15,237
Junior Lien	789	35	0		-
					-
Refinance					-
Conventional					-
First lien	5,518,481	4,637,753	0.30		1,391,326
Junior lien	720,380	1,123,754	0.25		280,939
					-
Government					-
First lien	150,000	120,199	0.08		9,616
Junior lien	257	72	0		-
					-
Home Improvement					-
Conventional					-
First Lien	399,723	379,405	0.29		110,027
Junior lien	461,296	564,976	0.17		96,046
					-

Table 6 (continued)					
Government backed					-
First Lien	2,003	4,291	0.13		558
Junior lien	1,867	756	0		-
					-
Manufactured Housing					-
Conventional first lien					-
Home Purchase	99,964	115,134	0.44		50,659
Refinance	69,807	68,545	0.71		48,667
					-
Non-Owner Occupied					-
Home purchase	1,010,518	914,168	0.28		255,967
Refinance	557,262	504,129	0.28		141,156
Total without MultiFamily	15,014,312	14,923,459			4,223,643
and Other					
Total					28.3%

STATEMENT OF

DAVID M. MARQUIS, DIRECTOR
NATIONAL CREDIT UNION ADMINISTRATION
OFFICE OF EXAMINATION AND INSURANCE

"ROOTING OUT DISCRIMINATION IN MORTGAGE LENDING: USING HMDA AS A TOOL FOR FAIR LENDING ENFORCEMENT"

JULY 25, 2007

I. Introduction

The National Credit Union Administration's (NCUA) primary mission is to ensure safety and soundness, as well as compliance with applicable federal regulations, for federally insured credit unions. It performs this important public function by examining all federally chartered credit unions (FCUs), participating in the supervision of federally insured state-chartered credit unions in coordination with state regulators, and insuring credit union member accounts. In its statutory role as administrator for the National Credit Union Share Insurance Fund (NCUSIF), NCUA provides oversight and supervision to 8,263 federally insured credit unions, representing 98 percent of all credit unions and approximately 86 million members.[1]

Scope of Responsibility

The NCUA regulates and insures all FCUs and insures most state chartered credit unions. Under this framework, NCUA is responsible for enforcing regulations in FCUs and for evaluating safety and soundness in all federally insured credit unions. NCUA is responsible for monitoring and enforcing compliance with most federal consumer laws and regulations in FCUs. In state chartered credit unions, the appropriate state supervisory authority has regulatory oversight and enforces state consumer laws and regulations.

As the table[2] below indicates, NCUA is responsible for enforcing the Home Mortgage Disclosure Act (HMDA) in all credit unions and the Equal Credit Opportunity Act (ECOA) in FCUs. NCUA also has a collateral responsibility to report identified violations of the Fair Housing Act (FHA) to the Department of Justice or Department of Housing and Urban Development (HUD), if appropriate.

Law/Regulation	FCU	FISCU	Non Federally Insured
Fair Housing Act	HUD	HUD	HUD
Equal Credit Opportunity Act (Regulation B)	NCUA	FTC	FTC
Home Mortgage Disclosure Act (Regulation C)	NCUA	NCUA	NCUA

(HUD = Department of Housing and Urban Development; NCUA = National Credit Union Administration; FTC = Federal Trade Commission)

Although NCUA is not the enforcement authority for all regulations associated with fair lending, Title II of the Federal Credit Union Act authorizes NCUA to initiate administrative actions for violations of law.[3] NCUA can also issues administrative actions for unsafe and unsound practices. Weaknesses in fair lending procedures could

[1] Approximately 174 state chartered credit unions are privately insured and are not generally subject to NCUA oversight. One notable exception is HMDA reporting.
[2] Excerpted from NCUA Examiner's Guide, Chapter 19, Illustration 19-A.
[3] 12 U.S.C. §1786.

constitute unsafe and unsound practices and ultimately risks to the NCUSIF, if the violations potentially expose an insured credit union to costly litigation or civil remedies.

II. Overview of Credit Union Industry

As of June 30, 2007, the NCUA was overseeing 8,263 federally insured credit unions. This total includes 5,128 federally chartered credit unions regulated by NCUA and the 3,135 state-chartered credit unions insured by the NCUSIF.

From the standpoint of both financial health and regulatory compliance, the credit union industry remains collectively strong. The statistics from March 31, 2007, indicate that federally insured credit unions overall have healthy capital levels, with over 98 percent of federally insured credit unions having net worth ratios exceeding 7 percent.

Number of Credit Unions with Net Worth Ratios	December 2006	% of Total	March 2007	% of Total
7% or above	8,235	98.48%	8,169	98.36%
6% to 6.99%	58	.69%	70	.84%
4% to 5.99%	36	.43%	39	.47%
2% to 3.99%	20	.24%	13	.16%
Less than 2%	8	.10%	9	.11%
Less than 0%	5	.06%	5	.06%

Other financial trends indicate that during 2007 federally insured credit unions have experienced robust share (deposit) growth, increased net worth dollar levels, and declining delinquency and charged-off loan ratios.

Overall, federally insured credit unions are strong. Approximately 80 percent of federally insured credit unions have CAMEL composite ratings of 2 or higher.[4] Moreover, just over 2.5 percent of federally insured credit unions have CAMEL composite ratings of 4 or worse. These credit unions represent less than one percent of assets in federally insured credit unions.

A majority of federally insured credit unions offer members the full spectrum of share and loan services, including mortgages. NCUA notes that while overall loan growth was flat during the first quarter of 2007, federally insured credit unions experienced increases, in the aggregate, in first mortgage and other real estate loans such as second mortgages and home equity lines of credit.

[4] NCUA uses the CAMEL rating system as an internal tool to measure risk at individual credit unions and allocate resources for supervision purposes. Under the CAMEL rating system, examiners assign a rating between 1 (strongest) and 5 (weakest) after assessing a credit union's Capital Adequacy, Asset Quality, Management, Earnings, and Asset/Liability Management.

NCUA has issued guidance that addresses safety and soundness issues relative to maintaining balance sheets with a larger concentration of long term assets. In addition to guidance about financial risk mitigation, NCUA reminds the industry that fairly priced and structured mortgage products often serve as alternatives to predatory lending practices currently found in the marketplace.

III. Mortgage Lending in Federally Insured Credit Unions

Mortgage loans in federally insured credit unions represent only 9 percent of mortgage loans outstanding in all federally insured depository institutions.[5] In 2006, the Mortgage Bankers Association estimated mortgage loan originations in the marketplace of over $2.51 trillion, of which federally insured credit unions originated only 2 percent or $54 billion.[6]

Approximately 68 percent of federally insured credit unions offer mortgage loans to their members. Those not offering mortgage loans are generally smaller federally insured credit unions that cannot afford the expertise or infrastructure required to manage significant mortgage portfolios. Additionally, smaller FCUs have difficulty implementing a wide range of mortgage products since loans to a single member are statutorily limited to 10 percent of a FCU's total unimpaired capital and surplus.[7] Consequently, as illustrated below, the majority of federally insured credit union mortgage lending occurs in larger credit unions.

Federally Insured Credit Unions by Asset Size	Number of Mortgage Loans Originated in 2006	% of Federally Insured Credit Union Mortgage Loan Portfolio as of 12/31/2006
Greater than $1 billion	509,936	43.02%
$500 million-$1 billion	255,009	17.75%
$50 million-$500 million	560,061	33.03%
$10 million-$50 million	100,546	5.71%
Less than $10 million	9,321	0.49%

[5] NCUA data and *FDIC- Statistics on Depository Institutions Report, 1-4 Family Residential Net Loans and Leases for all depository insured institutions as of 12/31/2006.* 31 Dec. 2006. Federal Deposit Insurance Corporation. < http://www2.fdic.gov/SDI/SOB>.
[6] NCUA Data and *MBA Mortgage Finance Forecast.* 12 Feb. 2007. Mortgage Bankers Association. <http://www.mbaa.org/files/Bulletin/InternalResource/48425_MortgageFinance MarketForecast-February2007.pdf>.
[7] 12 C.F.R. §701.21(c)(5). Unimpaired capital and surplus equals shares plus post-closing, undivided earnings.

IV. Fair Lending Legal Framework

This section describes the statutory and regulatory framework under which NCUA supervises the enforcement of fair lending practices in the credit union industry. The framework consists of the Home Mortgage Disclosure Act,[8] the Federal Reserve Board's Regulation C,[9] the Equal Credit Opportunity Act,[10] the Federal Reserve Board's Regulation B,[11] the Fair Housing Act,[12] and NCUA's nondiscrimination regulation.[13] NCUA examines FCU compliance with these requirements through its examination and supervision process.

The Home Mortgage Disclosure Act/Regulation C

The Home Mortgage Disclosure Act was enacted by Congress in 1975 and is implemented by Federal Reserve Board Regulation C.[14] It sets forth requirements for financial institutions, including credit unions to maintain and annually disclose data about home purchases, home purchase pre-approvals, home improvement, and refinance applications involving 1- to 4-unit and multifamily dwellings. HMDA requires lending institutions to report public loan data to help determine whether financial institutions are serving the housing needs of their communities; to assist public officials in distributing public-sector investment to attract private investment to areas where it is needed; and to assist in identifying possible discriminatory lending.

Regulation C applies to certain financial institutions and mortgage lending institutions including credit unions. Regulation C requires each credit union subject to HMDA reporting to provide data about home purchase loans, home improvement loans, and refinancings that it originates or purchases, or for which it receives applications,[15] and to disclose certain data to the public. However, credit unions and other financial institutions with assets at or below $36 million as of December 31, 2006, are exempt from data

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[8] 12 U.S.C. §2801 et seq.
[9] 12 C.F.R. Part 203.
[10] 15 U.S.C. §1601 et seq.
[11] 12 C.F.R. Part 202.
[12] 42 U.S.C. §3601 et seq.
[13] 12 C.F.R. §701.31.
[14] Attached as Appendix C is an extensive history of HMDA and Regulation C from the Federal Financial Institutions Examination Council's (FFIEC) web site at http://www.ffiec.gov/hmda/history2.htm. The website describes FFIEC as a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, and to make recommendations to promote uniformity in the supervision of financial institutions. In 2006, the State Liaison Committee (SLC) was added to the Council as a voting member. The SLC includes representatives from the Conference of State Bank Supervisors, the American Council of State Savings Supervisors, and the National Association of State Credit Union Supervisors.
[15] Within 30 days after receiving an application that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant of action taken or of the incompleteness in accordance with 12 C.F.R. §202.9.

collection for 2007.[16] That data includes information about the loan type, action taken on the application, loan amount, and specific information about ethnicity, race, and sex of applicants.

NCUA has administrative enforcement authority over credit unions for violations of HMDA and Regulation C, including the imposition of civil money penalties.[17] Recently NCUA has exercised this authority to penalize credit unions that were late in submitting HMDA data. Errors in compiling or recording loan data is not a violation of HMDA or Regulation C if unintentional, and if the errors occur in an environment where the financial institution maintained procedures reasonably adapted to avoid such errors.

Equal Credit Opportunity Act/Regulation B

The Equal Credit Opportunity Act ensures that all consumers are given an equal opportunity to obtain credit when dealing with any creditor who regularly extends credit, including banks, small loan and finance companies, retail and department stores, credit card companies, and credit unions. Borrower income, expenses, debt, and credit history are considered factors in determining creditworthiness under terms of this Act. This statute is implemented through Regulation B.

Regulation B applies to all creditors,[18] including credit unions. Regulation B promotes the availability of credit to all creditworthy applicants by prohibiting creditor practices that discriminate on the basis of race, color, religion, national origin, sex, marital status, age, receipt income from a public assistance program, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. This regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans; and to provide applicants with copies of appraisal reports used in connection with credit transactions.

[16] Appendix C provides additional information about how the Federal Reserve Board establishes exemption thresholds for HMDA reporting.

[17] 12 U.S.C. §2804(b)(3), 12 U.S.C §1751 et seq.

[18] Creditor means a person who, in the ordinary course of business, regularly participates in a credit decision, including setting the terms of the credit. The term creditor includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of 12 C.F.R. §202.4(a) and (b), the term creditor also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card. See 12 C.F.R. §202.3 for limited exemptions for certain classes of transactions.

When notification is required, a credit union shall notify an applicant of action taken within 30 days after:

- receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;
- taking adverse action on an incomplete application, unless proper notice is provided; and
- taking adverse action on an existing account; or
- 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

Regulation B requires specific content be included in written notification for creditors receiving more than 150 applications the preceding calendar year when adverse action is taken, including a description of action taken, the name and address of the credit union; a statement of the provisions of §701(a)[19] of the ECOA; the name and address of the federal agency that administers compliance with respect to the creditor; and either a statement of specific reasons for the action taken or a disclosure of the applicant's right to a statement of specific reasons. Other rules apply to notification to business credit applicants.

Credit unions are also subject to rules about record retention and preservation, requests for information about the racial, ethnic, gender, age and marital status of applicants, self testing-the practice that shows level of compliance with lending regulations, and electronic communication of disclosures and other information.

The Fair Housing Act

The Fair Housing Act prohibits discrimination in the sale, rental, and financing of dwellings,[20] and in other housing-related transactions, based on race, color, national origin, religion, sex, familial status, and handicap.

[19] The notice is to be substantially similar to "The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is [name and address as specified by the appropriate agency listed in appendix A of this regulation]".

[20] "Dwelling" is defined in 42 U.S.C. §3602(b) of the FHA as any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any building, structure, or portion thereof.

NCUA's Nondiscrimination Requirements

In addition to the above, NCUA nondiscrimination requirements in 12 C.F.R. §701.31 explicitly prohibit discriminatory lending, appraisal, and advertising practices. Specifically, an FCU may not deny a real estate-related loan, nor may it discriminate in setting or exercising its rights pursuant to the terms or conditions of such a loan, nor may it discourage an application for such a loan, on the basis of race, color, national origin, religion, sex, familial status, or handicap of the applicant.[21]

Furthermore, the requirements set forth prohibitions about nondiscrimination in appraisals and advertising. FCUs are prohibited from relying on appraisals based upon consideration of the race, color, national origin, religion, sex, familial status or handicap of an applicant, or based on consideration of the same criteria, which has the effect of discriminating on the basis of race, color, national origin, religion, sex, familial status or handicap. Additionally, an FCU may not engage in any form of advertising of real estate-related loans that indicates the credit union discriminates on the basis of the above prohibited classes in violation of the FHA.

V. Fair Lending Oversight Process

NCUA enforces fair lending by obtaining sufficient information from the credit unions it oversees during the examination process and responding to credit union members who complain about fair lending issues. NCUA uses the examination process and member complaint trends to evaluate fair lending in FCUs.[22] Examiners supervising FCUs follow risk focused examination procedures. NCUA adopted a flexible structure for scheduling examinations and developing supervision plans to more efficiently allocate field staff resources.[23] By allowing examiners to customize the scope of on-site examinations to correlate with each individual FCU's circumstances, examiners obtain greater insights about how each FCU manages risk, including those associated with fair lending.[24]

Examination Process

During 2000, NCUA adopted the fair lending examination procedures developed collectively by the FFIEC. The rigorous review mandated by FFIEC procedures has resulted in NCUA reallocating resources by budgeting time in each region for

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[21] The term "applicant" includes (i) any applicant or joint applicant; (ii) any person associated, in connection with a real estate-related loan application, with an applicant or joint applicant; (iii) the present or prospective owners, lessees, tenants, or occupants of the dwelling for which a real estate-related loan is requested; (iv) the present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling for which a real estate-related loan is requested.

[22] In federally insured state-chartered credit unions, NCUA also evaluates fair lending issues relative to HMDA compliance and assesses other fair lending concerns from the standpoint of safety and soundness in partnership with the state supervisory authority.

[23] NCUA Letter to Federal Credit Unions 01-FCU-05 (August 2001), Risk-Based Examination Scheduling Policy, http://www.ncua.gov/letters/2001/01-FCU-05.pdf.

[24] NCUA Letter to Federal Credit Unions 02-FCU-09 (May 2002), Risk-Focused Examination Program, http://www.ncua.gov/letters/2002/02-FCU-09.html.

examinations devoted exclusively to fair lending and assigning employees to serve as fair lending subject matter examiners. NCUA selects credit unions for the fair lending examinations based on factors such as member complaints, HMDA data, and the extent or complexity of lending programs.

NCUA staff also evaluates fair lending compliance at other types of examinations. Under the risk focused examination program, compliance is one of the seven risk areas.[25] In risk focused examinations, examiners assign a level of risk (high, medium, low) for each of the seven risk areas and then develop a scope for each examination or supervision contact based upon a credit union's individual risk factors.

Examiners use NCUA's Automated Integrated Regulatory Examination Software (AIRES), which uses questionnaires to guide and document reviews. NCUA examiners provide basic compliance oversight for the FCUs in their district, reviewing compliance areas that indicate levels of risk. Within the AIRES application, examiners have access to questionnaires for each compliance regulation for which NCUA has enforcement authority. These questionnaires provide the following key components on each regulation:

- Summary of the basic purpose or applicability of the law/regulation;
- NCUA's enforcement responsibility;
- Penalties resulting from failure to comply;
- Record retention requirements, if any; and
- Key questions for consideration during the review and general information to assist the examiner.

When violations are noted, they are documented in NCUA's centralized CRVL database. Additionally, examiners develop and communicate corrective actions to credit union officials as a part of their assessment of management. If the examiner notes material compliance violations, the examiner may downgrade the credit union's overall CAMEL rating.

NCUA's supervision efforts with respect to federally insured state-chartered credit unions focus on addressing safety and soundness concerns presenting a risk to the NCUSIF. NCUA generally defers to the state regulator with regard to consumer violations. However, NCUA would become actively involved with fair lending issues at a federally insured state-chartered credit union if the issue exposes the NCUSIF to risk or upon becoming aware of a violation warranting referral to the Department of Justice or HUD.

Review of HMDA Data

For all credit unions subject to HMDA filing requirements, NCUA works closely with the Federal Reserve Board to ensure that credit unions file their loan/application registers on

[25] The seven areas of risk NCUA identifies in NCUA Letter to Federal Credit Unions 02-FCU-09 are credit risk, interest rate risk, liquidity risk, transaction risk, compliance risk, strategic risk, and reputation risk.

a timely basis. NCUA also issues Regulatory Alerts each year to ensure credit union officials are aware of filing requirements and the reporting deadline.[26]
For the 2005 reporting period, approximately 2,300 institutions overseen by NCUA for the purpose of HMDA reporting submitted loan/application register data. The respondents included federally insured credit unions, non-federally insured credit unions, and credit union service organizations. Combined, the NCUA respondents submitted data for 813,783 loan applications.

Based on the HMDA data collected, credit unions appear to be actively meeting the need for mortgage products among credit union applicants for mortgage credit. Reporting credit unions approved an overwhelming majority of the applications processed during the 2005 reporting period. Approximately 69 percent of all applications resulted in a loan origination. Moreover, the reporting credit unions denied fewer than 13 percent of all applications. Of the total applications processed, 11.90 percent resulted in a denial of credit and 1.06 percent resulted in a denial of a request for pre-approval of credit.

Credit unions are also serving underserved areas with mortgage products. When credit unions complete the loan/application registers, they identify the location of the properties under consideration by census tract. The HMDA data compares the income levels of the census tracts of the properties under consideration to the income levels of the larger metropolitan statistical areas (MSA) that encompass the properties. NCUA uses a similar methodology when determining, for the purposes of chartering policy, if an area qualifies as underserved. An area with a median family income level at or below 80 percent of the median family income for the larger metropolitan statistical area is underserved.

Census tract income information was available for approximately 90 percent of the mortgage loan applications reported. For underserved areas, 66 percent of mortgage loan applications the credit unions processed resulted in originations, with fewer than 18 percent of the mortgage loan applications that included property in underserved areas denied. The approval rate in areas for mortgage loans in non-underserved census tracks was 75 percent, with only approximately 10 percent denied.

During 2005, reporting credit unions originated over 72,000 mortgages, with 13.5 percent of those originations occurring in underserved areas. The median family income reported by the applicants who received mortgages in underserved areas was $55,000.[27] In contrast, the median family income for applicants who received mortgages in areas that did not qualify as underserved was much higher at $72,000.

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[26] The most recent Regulatory Alerts are at the link http://www.ncua.gov/reg_alerts/reg_alert.html on NCUA's Internet site. Regulatory Alert 07-RA-01, "Home Mortgage Disclosure Act Data Collection Requirements for 2007," advises credit unions of the requirements for collecting 2007 loan application data. Regulatory Alert 07-RA-02, "Submission of 2006 Data to Comply with the Home Mortgage Disclosure Act," advises credit unions of the filing requirements for the application data collected during 2006.
[27] Median family income reflects the income level at which half of all families earn more, and half earn less. The American Community Survey defines a family as "a householder and one or more people living in the same household who are related by birth, marriage, or adoption." See American Community Survey. U.S. Census Bureau. <http://factfinder.census.gov /home/saff/main. html?_lang=en>.

Member Complaint Process

Independent of the examination process, NCUA has a process in place to receive and act on a complaint initiated by a member of a FCU at any time. While most complaints are in the form of a letter, individuals also have access to a toll-free number to contact NCUA. Consumers may also use NCUA's Internet site (www.NCUA.gov) to submit a complaint via e-mail.

Members are aware of NCUA's role in assisting with the resolution of consumer concerns in two primary ways: 1) notices of denial of credit at a FCU lists NCUA's contact information; and 2) NCUA's Internet site provides a toll free consumer assistance hotline number and email contact information.

NCUA's complaint process encourages members to work with the credit union first. Typically, NCUA initially directs the FCU to investigate the complaint and provide the member a response with a copy to NCUA, or respond to NCUA. NCUA reviews the FCU's response and, if necessary, will further investigate the complaint. NCUA reviews all complaints for regulatory and consumer compliance violations. When a violation occurs, the violation is logged in NCUA's Consumer Regulation Violation Log (CRVL).[28] NCUA reports this violation data annually to the Federal Reserve Board in summary form.

NCUA central and regional offices have systems to track incoming complaints and responses. Each NCUA regional office has staff who review and evaluate consumer complaints. For complaints regarding state chartered credit unions, NCUA will coordinate with the appropriate state regulator. FCUs have supervisory committees comprised of credit union members whose primary duties include member protection, oversight of internal audit functions, and ensuring credit union member assets are safeguarded.[29]

The Federal Credit Union Act requires FCU boards of directors to appoint not less than three members or more than five members to serve as members of the supervisory committee.[30] Once appointed, the supervisory committee independently selects the chairperson and secretary. Supervisory committee members must be members of the credit union and bondable by the credit union's surety bond, which provides insurance protection against fraud and dishonesty.

The statutory purpose of the supervisory committee is to ensure independent oversight of the board of directors and management and to advocate the best interests of the members. Consistent with this responsibility, the Federal Credit Union Act provides supervisory committee members with the authority, by unanimous vote, to suspend any board member, executive officer, or credit committee member.

[28] Examiners also report consumer compliance violations noted during contacts on the CRVL.
[29] State chartered credit unions have comparable oversight committees.
[30] 12 U.S.C. §111(b).

All supervisory committee members are volunteers. To preserve independence, only one member of the supervisory committee may be a member of the credit union's board of directors. Moreover, employees and credit committee members are not eligible for membership on the supervisory committee as outlined in the Federal Credit Union Bylaws. Sound internal controls also preclude FCU loan officers, membership officers, treasurers, assistant treasurers, presidents, vice presidents and secretaries from being members of the supervisory committee.

As the members' advocate, supervisory committees are responsible for investigating member complaints. Complaints cover a broad spectrum of areas, including annual meeting procedures, dividend rates and terms, and credit union services. The most common complaints relative to fair lending include lending policies and procedures and loan rejections. Regardless of the nature of the complaint, NCUA expects supervisory committees to conduct a full and complete investigation.

When addressing member complaints, supervisory committees will determine the appropriate course of action after thoroughly reviewing the unique circumstances surrounding each complaint.[31] Typically, supervisory committees will interview the complainant in private to fully understand his or her concerns. Then, as necessary, the supervisory committee will:

a) Review the member's file;
b) Review pertinent written credit union policies and procedures, and determine their compliance with applicable credit union laws and regulations;
c) Interview appropriate credit union officials and/or employees;
d) Review several loans, if necessary, to determine the actual practices of the credit union and how they relate to the complaint;
e) Determine the validity of the complaint;
f) Work with the officials to develop plans to correct any improper, unfair, or discriminatory practices, if applicable, or make appropriate recommendations;
g) Obtain agreements from appropriate credit union officials and/or employees to implement corrective action within a specified time;
h) Provide the member with an appropriate response; and
i) Maintain appropriate records for actions taken on complaints. NCUA has the authority to review the supervisory committee's records and actions at anytime.

The supervisory committee investigates incoming complaints and provides an explanation of the circumstances to NCUA. NCUA encourages the resolution of the matter voluntarily, but is authorized and prepared to invoke administrative action authority, if necessary, to achieve a proper outcome. Regional Directors are responsible for making determinations about necessary action on a case-by-case basis and coordinate responses with NCUA's central office.[32]

[31] Supervisory Committee Guide, Chapter 4.
[32] NCUA Instruction No. 12400.05, dated April 23, 2004.

Based on NCUA's review of responses to member complaints, supervisory committees are meeting their statutory mandates. Notwithstanding this factor, NCUA would intervene in the instances where the supervisory committee provides an incomplete or inaccurate response. In these cases, NCUA would follow through by assigning an examiner to investigate the facts at the field level and work with management in developing an appropriate solution. If management fails to correct violations, NCUA can invoke administrative remedies that can range from Letters of Understanding and Agreement,[33] Cease and Desist orders, and Civil Money Penalties.

The overwhelming majority of member complaints stem from either the member's misunderstanding of the FCU's policies or poor initial communication between the credit union and the member. As a result, virtually all complaints are resolved after NCUA directs the FCU to address the complaint with its member and communicate with the member. Following final review, NCUA sends the member a letter that summarizes the results of the review and advises the member in writing of its understanding that the complaint is resolved. Since resolution is usually achieved at the local level, the NCUA Board has not needed to pursue formal administrative remedies to correct fair lending violations.

For unusual cases where a credit union cannot resolve a complaint and the member is not satisfied with NCUA's recommended resolution, the member can also request assistance from NCUA's Ombudsman. The Ombudsman assists in resolving problems by helping the complainant identify available options and by recommending actions to the parties involved, but the Ombudsman cannot at any time decide on matters in dispute or advocate positions of the complainant, NCUA, or other parties. The Ombudsman reports to the NCUA Board and is independent from operational programs.

VI. Supervision Efforts Since 2004

During the period between January 1, 2004, and June 30, 2007, NCUA's fair lending examiners completed 81 fair lending examinations. NCUA's fair lending program progressed to include comprehensive fair lending examinations after adopting the FFIEC's interagency fair lending procedures. These specialized examinations complement NCUA's ongoing supervision efforts.

[33] Letters of Understanding and Agreement (LUAs) are supervisory tools used by NCUA. An LUA is essentially a contract between NCUA and a credit union and/or its officials, in which the credit union or officials agree to take, or not take, certain specified actions. Normally, LUAs are negotiated when credit unions have not adequately responded to less severe measures.

After completing over 50,000 contacts at federally insured credit unions since January 1, 2004, NCUA identified 25,689 consumer compliance violations. Of this total, only a negligible percentage pertained to laws related to fair lending:

Category	Number of Violations	Percentage
Equal Credit Opportunity Act	456	1.78%
Home Mortgage Disclosure Act	223	0.87%
Fair Housing Act	101	0.39%
All Other Consumer Compliance Categories	24,909	96.96%
Totals	25,689	100.00%[34]

Presently, NCUA has 25 fair lending examiners. To become a fair lending examiner, an employee must have several years of experience, receive special training, and reach the highest grade available for a district examiner.

Over the past several years, NCUA's training programs for the fair lending examiners continue to mature. Recent training initiatives include providing fair lending examiners with software to better understand lending patterns in geographic areas. In addition, NCUA engaged an outside vendor[35] to enhance NCUA's training about how to detect patterns of discrimination.

Examiners also provide basic compliance oversight during routine examinations and supervision contacts. NCUA advises examiners that a credit union's compliance risk profile can change rapidly due to innovation of products and services, changes in regulation, competitive pressures, field of membership expansion, and advances in information technology. Under a risk focused examination program, examiners consider compliance concerns, including those associated with fair lending, which can affect three areas of risk:

- Compliance risk which can occur when the credit union fails to implement the necessary controls to comply with appropriate consumer compliance regulations;
- Reputation risk which can occur when the credit union incurs fines, penalties, and poor publicity as a result of failure to comply with the appropriate consumer compliance regulations; and
- Strategic risk which can occur when management fails to perform adequate planning and due diligence regarding consumer compliance regulations.[36]

At a macro level, NCUA continually emphasizes the importance of complying with all consumer regulations. During sessions with credit union trade groups, NCUA's senior

[34] Data derived from the violations posted on NCUA's CRVL from January 1, 2004 through June 30, 2007. Appendix D summarizes the violations NCUA noted from July 1, 2003 through June 30, 2006.
[35] The vendor was PCi, a part of Wolters Kluwer Financial Services. The vendor specializes in developing software to assist regulators and financial institutions with regulatory compliance.
[36] NCUA Examiner's Guide, Chapter 13.

managers frequently advise attendees of emerging trends affecting lending and of the importance of complying with all applicable laws and regulations. NCUA's senior managers also provide similar updates to field supervisors at training sessions.

VII. NCUA's Enforcement Actions

NCUA has not needed to refer any cases to the Department of Justice since 2004 because the fair lending examinations and other contacts completed did not reveal the presence of material patterns of discrimination. During 2006 and 2007, NCUA acted upon information received from the Federal Reserve Board regarding apparent irregularities in loan pricing. Thus far, the ensuing follow-up investigations by examiners have revealed several HMDA data reporting errors, but no discriminatory practices.

After noting disappointing trends with regard to lateness in filing HMDA data during 2005, NCUA became more aggressive in taking action against credit unions that were late in filing HMDA data. For late filing, NCUA assessed 18 civil money penalties totaling $220,250 in 2005 and assessed 22 civil money penalties totaling $174,500 in 2006.[37]

VIII. NCUA Promotion of Financial Education

NCUA also recognizes the importance of financial literacy training in helping members understand their rights and responsibilities as consumers. The NCUA Board Members frequently comment about how financial education fosters financial stability for individuals and for entire communities. In addition, NCUA's Chairman serves as a member of the U.S. Department of Treasury's Financial Literacy and Education Commission.

Credit unions have demonstrated that they view financial education as a natural outgrowth of their service-oriented philosophy. Increased financial literacy represents an ounce of prevention that can help all consumers avoid getting in over their heads and actually enables them to use their money wisely and improve their financial health. The advertising slogan "an educated consumer is our best customer" is very apt when discussing the value of financial literacy.

NCUA is a member of the Financial Literacy and Education Commission (the Commission), a federal entity established under the Financial Literacy and Education Improvement Act, enacted by Title V of the Fair and Accurate Credit Transactions Act of 2003, to improve financial literacy and education of persons in the United States.

The principal duties of the Commission include: (1) encouraging government and private sector efforts to promote financial literacy; (2) coordinating financial education efforts of the federal government, including the identification and promotion of best practices; (3) the development of a national strategy to promote financial literacy and education among

[37] Appendices A and B provide a complete list of the Civil Money Penalties NCUA assessed during 2005 and 2006 for late HMDA filings.

all American consumers; (4) the establishment of a website to serve as a clearinghouse and provide a coordinated point of entry for information about federal financial literacy and education programs, grants, and other information; and (5) the establishment of a toll-free hotline available to members of the public seeking information about issues pertaining to financial literacy and education.

In addition to serving as a member of the Commission, NCUA Chairman Johnson has served as Chairman of its MyMoney.gov website subcommittee since October 2006. The MyMoney.gov website was created to provide public access to financial education tools and resources, which will empower Americans to save, invest and manage money wisely to meet personal goals. In this role, the Chairman coordinates the efforts of 20 federal agencies to improve financial education across the nation.

The Access Across America initiative, announced in February 2002, incorporated NCUA's activities for federally insured credit unions expanding services into underserved areas. The program has been designed to partner with federal government agencies and other organizations to identify and facilitate the use of resources available for federally insured credit unions to assist in their efforts to serve individuals in underserved areas.

Another program NCUA developed to help consumers and improve financial literacy is the Community Development Revolving Loan Fund (CDRLF). The CDRLF awards grants and loans to low-income designated credit unions to enable them to provide financial services to their communities, including financial education. Financial education programs often include topics such as understanding credit, understanding finance charges, managing personal credit, credit awareness and budgeting.

In 2004, NCUA created a Financial Education grant initiative to provide members with practical money management skills. Since 2004, NCUA has awarded $461,885 in technical assistance grants to credit unions for financial education and related purposes.

IX. Concluding Comments

NCUA continues to use appropriate procedures to evaluate federally insured credit unions for compliance with the laws and regulations governing fair lending. The results of NCUA's on-site reviews indicate that federally insured credit unions are generally compliant with the laws and regulations applicable to fair lending. In addition, member feedback indicates fair lending violations are rare and documented concerns are quickly resolved at the local level.

Appendix A – Civil Money Penalties Assessed During 2005

Name	Docket Number	Penalty	
Arrowhead Central Credit Union, San Bernadino, California	05-1002-V	$	22,500
Paradise Federal Credit Union, National City, CA	05-1001-V	$	19,000
White River Credit Union, Enumclaw, WA	05-0810-V	$	8,750
NEBO Credit Union, Spanish Fort, UT	05-0809-V	$	8,500
California Lithuanian Credit Union, Santa Monica, CA	05-0808-V	$	11,500
Norton Community Credit Union, San Bernardino, CA	05-0807-V	$	15,000
Valley Oak Credit Union, Three Rivers, CA	05-0806-V	$	18,000
Moapa Federal Credit Union, Overton, NV	05-0805-V	$	9,500
Arizona Federal Credit Union, Phoenix, AZ	05-0804-V	$	14,000
Hawaii State Federal Credit Union, Honolulu, HI	05-0803-V	$	10,250
Hawaiian Tel Federal Credit Union, Honolulu, HI	05-0802-V	$	10,250
Marine Credit Union, Fond Fu Lac, WI	05-0803-IV	$	9,500
Golden Key Federal Credit Union, El Paso, TX	05-0802-IV	$	10,500
School Employees Lorain City Credit Union, Elyra, OH	05-0804-III	$	9,250
Hillcrest Credit Union, Richmond Heights, OH	05-0803-III	$	14,000
Members Advantage Credit Union, Michigan City, IN	05-0802-III	$	7,750
Rouge Employees Credit Union, Dearborn, MI	05-0801-I	$	14,500
Jefferson County Employees Credit Union, Birmingham, AL	05-0801-III	$	7,500
Totals	-	**$**	**220,250**

Appendix B – Civil Money Penalties Assessed During 2006

Region	Charter	Credit Union Name	Amount of Settlement	Docket Number
1	15080	Rockland Employees	$12,250.00	06-1101-I
3	61831	Fulton Teachers	11,750.00	06-1102-III
1	3962	Hudson Heritage	9,000.00	06-1102-I
1	9348	Katahdin	9,000.00	06-1103-I
3	20974	Bond Community	8,750.00	06-1105-III
4	66390	Horizon Community	8,250.00	06-1106-IV
5	68240	Minnequa Works	8,250.00	06-1103-V
1	15358	Actors	7,500.00	06-1104-I
4	18944	Rock Valley	7,250.00	06-1103-IV
5	12585	MOAPA Valley	14,000.00	06-1201-V
5	68390	Visterra CU (March Community)	7,000.00	06-1104-V
4	2995	Alamo	6,750.00	06-1104-IV
3	60368	Dekalb Financial	6,750.00	06-1107-III
4	68385	Heritage	6,750.00	06-1102-IV
4	1245	Pine Bluff Cotton Belt	6,750.00	06-1101-IV
3	352	Tampa Bay	6,750.00	06-1101-III
5	5816	United Methodist	6,500.00	06-1101-V
3	66325	Winston-Salem City Employees	6,500.00	06-1103-III
3	67319	Central FL Postal	6,500.00	06-1104-III
5	1634	Embarcadero	6,500.00	06-1102-V
3	14562	Evansville	6,250.00	06-1106-III
4	7224	Golden Key	5,500.00	06-1105-IV
Total			**$174,500.00**	

Appendix C – HISTORY OF HMDA

The Home Mortgage Disclosure Act (HMDA) was enacted by Congress in 1975 and is implemented by the Federal Reserve Board's Regulation C.

In 1980, amendments to HMDA directed the Federal Financial Institutions Examination Council (FFIEC) to compile annually for each Metropolitan Statistical Area (MSA) aggregate lending data by census tract for certain lenders. In addition, the FFIEC was directed to produce tables for each MSA that aggregates the lending activity of institutions by various categories of census tracts, grouped according to location, age of housing stock, income level, and racial characteristics. The aggregate lending data are forwarded annually by the FFIEC to a central data depository in each MSA (usually libraries or planning agencies designated by the FFIEC).

A congressional act passed on February 5, 1988, amended the law and expanded coverage to nonmajority-owned savings and loan service corporations, mortgage banking subsidiaries of bank holding companies, and mortgage banking subsidiaries of savings and loan holding companies. (Previously, only depository institutions and their majority-owned subsidiaries were covered.)

In 1989, the Federal Reserve Board revised Regulation C, to incorporate amendments contained in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). The FIRREA amendments accomplished the following: expanded the coverage of HMDA to include mortgage lenders not affiliated with depository institutions or holding companies; required reporting of data regarding the disposition of applications for mortgage and home improvement loans in addition to data regarding loan originations and purchases; and required most lenders to identify the race, sex, and income of loan applicants and borrowers. Lenders were also required to identify the class of purchaser for mortgage loans sold and were permitted to explain the basis for their lending decisions. To facilitate the collection of this information, Regulation C requires a loan/application register (LAR) to be submitted by each institution. The LAR allows institutions to log loan applications, loans originated, and loans purchased.

In 1991, Congress, via the Federal Deposit Insurance Corporation Improvement Act, authorized the Federal Reserve Board, in consultation with the Department of Housing and Urban Development, to develop a new exemption standard for nondepository mortgage lenders that is comparable to the exemption for depository institutions. In 1992, the Federal Reserve Board adopted a standard that further expanded coverage of independent mortgage lenders. Under the adopted standard, a nondepository mortgage lender with an office in an MSA is covered if it meets either an asset-size test or a lending activity test.

The Federal Reserve Board also revised the instructions for reporting loan applications received through a loan broker or correspondent to make the rule for reporting loan approvals conform to the existing rule for reporting loan denials. This revision applies to all lenders covered by HMDA, not only nondepository mortgage lenders.

In 1993, Regulation C was revised by the Federal Reserve Board to incorporate amendments contained in the Housing and Community Development Act of 1992. The amendments required institutions--in response to requests from the public--to make a modified version of their loan/application register data available within 30 days of the date it was due to its regulatory agency. The amendments also required institutions to make their FFIEC Disclosure Statements publicly available within three business days of receipt from the FFIEC. These amendments were applied beginning with the 1992 HMDA data collection.

In 1994, Regulation C was amended by the Federal Reserve Board to make HMDA data available to the public earlier, to improve the accuracy of the HMDA data, and to clarify and simplify the reporting requirements. Amendments that require institutions, except those with 25 or fewer line entries, to report in machine-readable format and update their HMDA loan/application registers on a quarterly basis were intended to improve data quality, as well as aid in earlier data availability. In addition, institutions were expected to accurately compile and check their data before submission.

The 1994 amendments were applied by institutions beginning with the calendar year (CY) 1995 data. Institutions, however, had to comply with the new or changed requirements beginning with the CY 1996 data. (For the amendment concerning the transmittal sheet, i.e., inclusion of total number of line entries contained in the accompanying data submission, compliance was mandatory beginning with the submission of the CY 1995 data due March 1, 1996.)

The Federal Reserve Board adopted an interim rule to Regulation C in September 1996 that raised the exemption threshold level for depository institutions from $10 million to $28 million in assets. The interim rule became final in 1997, subsequently requiring depository institutions with assets greater than $28 million as of December 31, 1996, to collect HMDA data for CY 1997 provided they also meet the other reporting criteria. The final rule also established an alternative way for institutions to provide disclosure statements in metropolitan areas where they have branch offices, which they could begin using with CY 1996 statements and for prior years' data. Institutions must continue to make a complete copy of their disclosure statement available to the public, at their home office, within three business days of receiving the statement from the FFIEC.

For branch offices located in other metropolitan areas, institutions can either make the disclosure statement available to the public, within ten business days of receiving it, in at least one branch office in each additional MSA where they have offices; or post a notice informing the public that disclosure statements will be provided upon written request and indicating the address for sending requests. A specific branch disclosure statement need only contain data relating to the MSA for which the request is made and will be sent to the requestor within fifteen calendar days of receiving a written request.

In 1998, the amendments consisted of a modification to the loan/application register (LAR) to prepare for Year 2000 data systems conversion, deletion of the requirement to enter the reporting institution's parent company on the transmittal sheet, and technical changes to the regulation and reporting forms.

In order to meet the Year 2000 data systems standards, the final rule to Regulation C requires a lender to report dates on the LAR using four digits for the year, rather than two digits. For example, January 15, 1998, will be reflected as 01/15/1998 rather than 01/15/98.

As previously adopted and declared in 1997, Section 203.2 (e)(1)(i) of Regulation C provides that the Federal Reserve Board will adjust the exemption threshold for depository institutions annually based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPIW), not seasonally adjusted, for each twelve-month period ending in November, rounded to the nearest million. Pursuant to this section, the Federal Reserve Board raised the threshold to $29 million for the 1998 data collection.

In 1999, there were no changes to Regulation C. The asset threshold for depository institutions remained at $29 million for the 1999 data collection. The asset threshold for nondepository institutions remained the same as in 1998 -- $10 million or less (when combined with the assets of any parent corporation) or originated 100 or more home purchase loans (including refinancings of home purchase loans) in the preceding calendar year.

The Federal Reserve Board raised the asset threshold for depository institutions to $30 million for the 2000 data collection. The nondepository institution asset threshold was unchanged from 1999.

The Federal Reserve Board raised the asset threshold for depository institutions to $31 million for data collection in 2001 and to $32 million for data collection in 2002; the Federal Reserve Board kept the threshold at $32 million for data collection in 2003. The asset threshold for nondepository institutions for the 2000, 2001, 2002, and 2003 data collections continued to be the same as it was in 1999.

On January 23, 2002, the Federal Reserve Board amended the regulation to replace "metropolitan statistical area" with "metropolitan area," the term now used by the U.S. Office of Management and Budget (OMB). Metropolitan area will have the same meaning as "metropolitan statistical area" does currently. (We changed this term on all HMDA documents and reports on the 2003 data that we collect in 2004). In May 2002, the Federal Reserve Board adopted an interim amendment to Regulation C that is effective January 1, 2003. It mandates the use of 2000 census information in HMDA reporting. Another amendment that is effective January 1, 2003 requires lenders to ask applicants their race or national origin and sex in applications taken by telephone, conforming the telephone application rule to the rule applicable to mail and Internet applications; the data are reported on the calendar year 2003 HMDA data.

In May 2002, the Federal Reserve Board approved a final rule that postpones the effective date of the HMDA Regulation C amendments from January 1, 2003 to January 1, 2004. Those amendments expand the coverage of nondepository lenders by adding a $25 million dollar volume test to the existing percentage-based coverage test. The amendments include requiring lenders to report data items related to loan pricing; for loan originations in which the annual percentage rate (APR) exceeds the yield for comparable Treasury securities by a specified amount or threshold -- the thresholds are a spread of 3 percentage points for first-lien loans and 5 percentage points for subordinate-lien loans. The amendments also require lenders to report the lien status of applications and originated loans. Lenders must report whether a loan is covered by the Home Ownership and Equity Protection Act (HOEPA). The final rule requires lenders to report whether an application or loan involves a manufactured home.

There were certain definitions revised in the regulation including the definition of an application to include a request for preapproval as defined in the regulation, for purposes of reporting denials of such requests; and the definition of a refinancing and home improvement loan. In addition, the amendments conform the collection of data on race and ethnicity to standards established by the U.S. OMB in 1997.

In June 2003, OMB released the list of metropolitan statistical areas and metropolitan divisions, micropolitan statistical areas, and combined statistical areas, based on the application of the 2000 standards to data from the 2000 Census. Each MSA and Metropolitan Division is assigned a 5-digit number (previously, all MSAs and PMSAs were assigned 4-digit numbers). OMB Bulletin No. 03-04, June 6, 2003. In July 2003, the FFIEC instructed lenders to use the newly released MSAs and Metropolitan Divisions for collecting and reporting HMDA data beginning January 1, 2004. See http://www.ffiec.gov/hmda/pdf/spec2004.pdf. Regulation C refers to the MSA and the PMSA for determining coverage under HMDA, reporting property location, providing disclosures and reports of lending activity, and posting notices about the availability of HMDA data. The MSA, and in the case of large MSAs, the Metropolitan Division, are the geographic units most analogous to MSAs and PMSAs under the 1990 standards. Thus, their use minimizes any disruption in HMDA data caused by the changes to OMB standards.

In December of 2003, the Federal Reserve Board published a final rule amending Regulation C and the staff commentary that interprets the requirements of Regulation C. The regulation and staff commentary are amended to conform them to changes in the Standards for OMB. In addition, the revisions to Regulation C formalize the FFIEC's July 2003 guidance as discussed in the previous paragraph. The regulation, Appendix A, and the staff commentary are amended to use the terms "MSA" and "Metropolitan Division." The staff commentary was also amended to increase the asset-size threshold for depository institutions based on the annual percentage change in the CPIW. The asset threshold was raised to $33 million for data collection in 2004. The asset threshold for nondepository institutions for the 2004 data collection remains unchanged -- $10 million or less (when combined with the assets of any parent corporation) or originated 100 or more home purchase loans (including refinancings of home purchase loans) in the preceding calendar year.

In December 2004, the Federal Reserve Board increased the asset exemption threshold for depository institutions to $34 million for data collection in 2005. The asset threshold for nondepository institutions for the 2005 collection remained unchanged at $10 million or less (when combined with the assets of any parent corporation) or originated 100 or more home purchase loans (including refinancings of home purchase loans) in the preceding calendar year.

In December 2005, the Federal Reserve Board raised the asset exemption threshold for depository institutions to $35 million for data collection in 2006. The asset threshold for nondepository institutions for the 2006 collection remained unchanged.

In December 2006, the Federal Reserve Board raised the asset exemption threshold for depository institutions to $36 million for data collection in 2007. The asset threshold for nondepository institutions for the 2007 collection remained unchanged at $10 million or less (when combined with the assets of any parent corporation) or originated 100 or more home purchase loans (including refinancings of home purchase loans) in the preceding calendar year.

HMDA data are submitted to the Federal Reserve Board, on behalf of the FFIEC supervisory agencies, and following production of each institution's disclosure statement by the Federal Reserve Board, the FFIEC will post the HMDA aggregate tables and individual institution disclosure reports to www.ffiec.gov/reports.htm. Institutions should make their disclosure statements available to the public within three business days of receipt. Furthermore, each reporting institution must maintain a complete copy of its disclosure statement for public use in its home office. For branch offices, the lender has the option of making the statement available to the public in at least one branch office in each additional MSA/MD where it has offices; or the lender can post in the lobby of each branch office the address where a written request for the statement can be sent. (The disclosure statement need only contain data relating to the MSA/MD for which the request is made.)

Data collected under HMDA are used to help the public determine if lending institutions are meeting the housing credit needs of their communities, to help public officials target community development investment, and to help regulators enforce fair lending laws.

Appendix D – ANNUAL REPORTS OF COMPLIANCE TO THE FEDERAL RESERVE BOARD

November 24, 2004

Sandra F. Braunstein, Director
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
Washington, D.C. 20551

Dear Ms. Braunstein:

National Credit Union Administration (NCUA) Board Chairman JoAnn Johnson asked me to respond to your request for compliance data for the period from July 1, 2003 through June 30, 2004, to be used in the annual report to Congress prepared by the Federal Reserve Board.

Our primary enforcement method remains the examination process. During risk focused examinations, consumer compliance issues are reviewed using checklists with additional attention devoted to high risk areas. We also use FFIEC Interagency Fair Lending Examination Procedures to review fair lending issues; use of these procedures allows for consistency in all financial institutions. Over the past year, no significant enforcement actions were taken.

Institutions supervised by NCUA remain substantially compliant with Regulations AA, B, CC, DD, E, M, P, and Z. A table showing the percentage of examined institutions not in full compliance with the above regulations follows.

Regulation	Percent of Examined CUs Not Compliant
AA - Unfair or Deceptive Acts or Practices Rule (NCUA R&R 706)	0.19%
B - Equal Credit Opportunity	1.28%
CC - Expedited Fund Availability	1.08%
DD - Truth in Savings (NCUA R&R 707)	1.96%
E - Electronic Fund Transfer	0.26%
M - Consumer Leasing	0.00%
P - Privacy of Consumer Financial Information (NCUA R&R 716)	1.02%
Z - Truth in Lending	3.74%

NCUA counts each violated provision of a regulation once during an examination, regardless of the number of individual violations found during review of that provision. Since NCUA has not conducted more than five examinations at a particular institution over the past year, all institutions with reported violations can be classified in the one to five violation category.

You also requested the legal citation and a brief description for the five most frequently violated provisions of Regulations B, E, M, P, Z, CC, and DD. A table containing this information follows.

Regulation	Citation	Description
Regulation B	202.13	Government monitoring information not collected
(Equal Credit Opportunity)	202.4	General rules - written applications
	202.5	Requests for information - marital status, alimony income
	202.7	Improper requirements for cosigner
	202.9	Notifications - action taken, ECOA notice
Regulation CC	229.10	Inadequate compliance with next day availability of deposited funds
(Expedited Funds Availability)	229.13	Notice of exception to funds availability schedule not provided
	229.15	Initial funds availability notice is not posted/available to members
	229.18	Location accepting deposits lacks funds availability notice
	229.19	No ongoing Reg CC training
Regulation DD	707.3	No Truth in Savings disclosures
Part 707 of NCUA Rules and Regulations	707.4	Inaccurate disclosure of APY
(Truth in Savings)	707.5	No 30 day advance notice on term certificates
	707.6	Member statements lack APY
	707.8	Inaccurate signage
Regulation E	205.1	Inappropriate postings
(Electronic Funds Transfer)	205.11	Did not comply with timing for error resolution
	205.17	Disclosures could not be printed from web site
	205.7	No written disclosures provided to members
	205.8	Error resolution disclosure not provided.
Regulation M		No violations noted.
Regulation P	716.4	Privacy notices not sent to members
Part 716 of NCUA Rules and Regulations	716.5	Annual disclosure not provided
(Privacy of Consumer Financial Information)	716.6	Missing required information in disclosure
	716.7	No opt out directions provided
Regulation Z	226.15	Right of rescission not provided or not allowed appropriate period
(Truth in Lending)	226.17	Incomplete disclosure
	226.18	Content of disclosures was not sufficient
	226.24	Presentation of finance charges or APR in advertising
	226.5	Inadequate written disclosure

Citations for Regulations P and DD refer to the applicable portion of the NCUA Rules and Regulations for Federal Credit Unions. Since fewer than five provisions of

Regulations M and P were violated during the reporting period, only provisions with one or more reported violations are shown.

You also requested information concerning the total number of institutions not in compliance. A table showing comparative compliance during the current reporting period and the 2002-2003 reporting period follows.

Regulation	YE 6/03	YE 6/04
AA - Unfair or Deceptive Acts or Practices Rule (NCUA R&R 706)	24	14
B - Equal Credit Opportunity	86	93
CC - Expedited Fund Availability	53	78
DD - Truth in Savings (NCUA R&R 707)	109	142
E - Electronic Fund Transfer	20	19
M - Consumer Leasing	1	0
P - Privacy of Consumer Financial Information (NCUA R&R 716)	48	74
Z - Truth in Lending	295	271

You asked what regulation presents the greatest difficulty for the financial institutions we regulate. With 271 violations noted during the reporting period, compliance with Regulation Z, *Truth in Lending*, presents some difficulty for credit unions. Our review indicates almost 85 percent of these violations were technical. In general, members did not suffer a negative financial impact, and some members benefited from the errors.

To assist credit unions with compliance, NCUA issued Regulatory Alert 03-RA-08, *Regulation Z – Revisions to the Official Staff Commentary*, in May 2003. This alert provides a plain English overview of changes in the interpretation of Regulation Z.

We have no suggestions or recommendations for changing Regulations AA, B, CC, DD, E, M, P, or Z, at this time.

As requested, a copy of this letter and supporting schedules will be provided in an electronic format to Applications Team Leader Helen Troy at Helen.m.troy@frb.gov. If you have questions, please contact Program Officer Elizabeth Habring at (703) 518-6392 or via email at ehabring@ncua.gov.

Sincerely,

David M. Marquis, Director
Office of Examination and Insurance

EI/EAH:eah

Attachment

FRB Attachment
2004.xls

cc: Len Skiles, Executive Director

Helen Troy, Applications Team Leader
Federal Reserve Board

November 30, 2005

Sandra F. Braunstein, Director
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
Washington, D.C. 20551

Dear Ms. Braunstein:

National Credit Union Administration (NCUA) Board Chairman JoAnn Johnson asked me to respond to your request for compliance data for the period from July 1, 2004 through June 30, 2005, to be used in the annual report to Congress prepared by the Federal Reserve Board.

Our primary enforcement method remains the examination process. During risk focused examinations, consumer compliance issues are reviewed using checklists with additional attention devoted to high risk areas. We also use FFIEC Interagency Fair Lending Examination Procedures to review fair lending issues; use of these procedures allows for consistency in all financial institutions. Over the past year, no significant enforcement actions were taken.

Institutions supervised by NCUA remain substantially compliant with Regulations AA, B, CC, DD, E, M, P, and Z. A table showing the percentage of examined institutions not in full compliance with the above regulations follows.

Regulation	Percent of Examined CUs Not Compliant
AA - Unfair or Deceptive Acts or Practices Rule (NCUA R&R 706)	0.03%
B - Equal Credit Opportunity	1.66%
CC - Expedited Fund Availability	0.89%
DD - Truth in Savings (NCUA R&R 707)	1.66%
E - Electronic Fund Transfer	0.35%
M - Consumer Leasing	0.02%
P - Privacy of Consumer Financial Information (NCUA R&R 716)	0.29%
Z - Truth in Lending	3.30%

NCUA counts each violated provision of a regulation once during an examination, regardless of the number of individual violations found during review of that provision. Since NCUA has not conducted more than five examinations at a particular institution over the past year, all institutions with reported violations can be classified in the one to five violation category.

You also requested the legal citation and a brief description for the five most frequently violated provisions of Regulations B, E, M, P, Z, CC, and DD. A table containing this information follows.

Regulation	Citation	Description
Regulation B	202.9	Incomplete adverse action notice
(Equal Credit Opportunity)	202.13	Government monitoring information not collected
	202.7	Improper requirements for cosigner
	202.5	Require information on spousal income
	202.4	Kept member ID in loan file
Regulation CC	229.15	Initial funds availability notice is not posted/available to members
(Expedited Funds Availability)	229.18	Location accepting deposits lacks funds availability notice
	226.16	Inadequate written disclosure
	229.19	No ongoing Reg CC training
	229.13	Inaccurate holds placed on new deposits
Regulation DD	707.4	Inaccurate disclosure of APY
Part 707 of NCUA Rules and Regulations	707.3	No Truth in Savings disclosures
(Truth in Savings)	707.8	Inaccurate signage
	707.6	Member statements lack APY
	707.5	No 30 day advance notice on term certificates
Regulation E	205.7	No written disclosures provided to members
(Electronic Funds Transfer)	205.9	Lack of periodic disclosures
	205.10	Preauthorized transfers
	205.11	Resolution of error
	N/A	No other provisions violated
Regulation M	213.4	No good faith estimate found
(Consumer Leasing)	N/A	Not other provisions violated
Regulation P Part 716 of NCUA Rules and	716.4	Privacy notices not sent to members
Regulations (Privacy of Consumer Financial	716.5	Annual disclosure not provided
Information)	716.6	Missing required information in disclosure
	716.7	No opt out directions provided
	716.9	Delivering privacy and opt out notices
Regulation Z	226.5	Inadequate written disclosure
(Truth in Lending)	226.15	Right of rescission not provided or not allowed appropriate period
	226.18	Content of disclosures was not sufficient
	226.24	Presentation of finance charges or APR in advertising
	226.19	Improper adjustment of variable rate loans

Citations for Regulations P and DD refer to the applicable portion of the NCUA Rules and Regulations for Federal Credit Unions. Since fewer than five provisions of Regulations E and M were violated during the reporting period, only provisions with one or more reported violations are shown.

You also requested information concerning the total number of institutions not in compliance. A table showing comparative compliance during the current reporting period and the 2003-2004 reporting period follows.

Regulation	YE 6/05	YE 6/04
AA - Unfair or Deceptive Acts or Practices Rule (NCUA R&R 706)	2	14
B - Equal Credit Opportunity	110	93
CC - Expedited Fund Availability	59	78
DD - Truth in Savings (NCUA R&R 707)	110	142
E - Electronic Fund Transfer	23	19
M - Consumer Leasing	1	0
P - Privacy of Consumer Financial Information (NCUA R&R 716)	19	74
Z - Truth in Lending	218	271

You asked what regulation presents the greatest difficulty for the financial institutions we regulate. With 218 violations noted during the reporting period, compliance with Regulation Z, *Truth in Lending*, presents some difficulty for credit unions. Our review indicates almost 80 percent of these violations were technical. In general, members did not suffer a negative financial impact, and some members benefited from the errors.

To assist credit unions with compliance, NCUA issued Regulatory Alert 05-RA-08, Home Owners Equity Protection Act, in October 2005. This alert provides a plain English overview of changes in the threshold amounts associated with Section 32 of Regulation Z.

We have no suggestions or recommendations for changing Regulations AA, B, CC, DD, E, M, P, or Z, at this time.

As requested, a copy of this letter and supporting schedules will be provided in an electronic format to Supervisory Consumer Financial Services Analyst Karen Bowman at Karen.s.bowman@frb.gov. If you have questions, please contact Program Officer Elizabeth Habring at (703) 518-6392 or via email at ehabring@ncua.gov.

Sincerely,

David M. Marquis, Director
Office of Examination and Insurance

EI/EAH:eah

Attachment

2005_FRB_DataPage
.xls

cc: Len Skiles, Executive Director

Karen Bowman, Supervisory Consumer Financial Services Analyst
Federal Reserve Board

December 6, 2006

Sandra F. Braunstein, Director
Division of Consumer and Community Affairs
Board of Governors of the Federal Reserve System
Washington, D.C. 20551

Dear Ms. Braunstein:

National Credit Union Administration (NCUA) Board Chairman JoAnn Johnson asked me to respond to your request for compliance data for the period from July 1, 2005 through June 30, 2006, to be used in the annual report to Congress prepared by the Federal Reserve Board.

Our primary enforcement method remains the examination process. During risk focused examinations, consumer compliance issues are reviewed using checklists with additional attention devoted to high risk areas. We also use FFIEC Interagency Fair Lending Examination Procedures to review fair lending issues; use of these procedures allows for consistency in all financial institutions. Over the past year, no significant enforcement actions were taken.

Institutions supervised by NCUA remain substantially compliant with Regulations AA, B, CC, DD, E, M, P, and Z. A table showing the percentage of examined institutions not in full compliance with the above regulations follows.

Regulation	Percent of Examined CUs Not Compliant
AA - Unfair or Deceptive Acts or Practices Rule (NCUA R&R 706)	0.12%
B - Equal Credit Opportunity	2.27%
CC - Expedited Fund Availability	0.88%
DD - Truth in Savings (NCUA R&R 707)	1.79%
E - Electronic Fund Transfer	0.21%
M – Consumer Leasing	0.00%
P - Privacy of Consumer Financial Information (NCUA R&R 716)	0.59%
Z - Truth in Lending	4.12%

NCUA counts each violated provision of a regulation once during an examination, regardless of the number of individual violations found during review of that provision. Since NCUA has not conducted more than five examinations at a particular institution over the past year, all institutions with reported violations can be classified in the one to five violation category.

You also requested the legal citation and a brief description for the five most frequently violated provisions of Regulations B, E, M, P, Z, CC, and DD. A table containing this information follows.

Regulation	Citation	Description
Regulation B	202.9	Incomplete adverse action notices
(Equal Credit Opportunity)	202.13	Government monitoring information not collected
	202.4	Keeping members' photo IDs in loan file
	202.5	Co-maker / spousal implications
	202.6	Written policies / validation for risk-based lending program
Regulation CC	229.16	No policy / Inadequate written disclosures
(Expedited Funds Availability)	229.18	No disclosure in lobby area
	229.17	Initial disclosure not provided
	229.19	Employee training
	229.12	Inadequate policy
Regulation DD	707.8	Inaccurate signage on website
Part 707 of NCUA Rules and Regulations	707.4	Inaccurate disclosures
(Truth in Savings)	707.3	No Truth in Savings disclosures / initial disclosures
	707.5	No 30 day advance notice on account changes
	707.6	Inaccurate member statements
Regulation E	205.7	Written disclosures not provided
(Electronic Funds Transfer)	205.4	Periodic disclosures not provided to members
	205.11	Resolution of errors
	205.5	No Reg E disclosures on transactional website
	205.6	Inaccurate disclosures
Regulation M	N/A	No provisions violated
(Consumer Leasing)		
Regulation P	716.5	Annual notice not provided
Part 716 of NCUA Rules and Regulations	716.4	Initial notice not provided to members
(Privacy of Consumer Financial Information)	716.6	Missing link to notice on website
	716.7	No opt out directions provided in notice
	716.9	Inadequate disclosure/notice
Regulation Z	226.18	Insufficient / inaccurate disclosures
(Truth in Lending)	226.5	Inadequate written disclosure
	226.24	Inaccurate APR disclosures
	226.17	Disclosure statement not issued to borrower
	226.23	Right of rescission notice not issued

Citations for Regulations P and DD refer to the applicable portion of the NCUA Rules and Regulations for Federal Credit Unions. Please note, no provisions of Regulation M were violated during the reporting period.

You also requested information concerning the total number of institutions not in compliance. A table showing comparative compliance during the current reporting period and the 2004-2005 reporting period follows.

Regulation	YE 6/06	YE 6/05
AA - Unfair or Deceptive Acts or Practices Rule (NCUA R&R 706)	8	2

B - Equal Credit Opportunity	150	110
CC - Expedited Fund Availability	58	59
DD - Truth in Savings (NCUA R&R 707)	118	110
E - Electronic Fund Transfer	14	23
M - Consumer Leasing	0	1
P - Privacy of Consumer Financial Information (NCUA R&R 716)	39	19
Z - Truth in Lending	272	218

You asked what regulation presents the greatest difficulty for the financial institutions we regulate. With 412 violations noted during the reporting period, compliance with Regulation Z, *Truth in Lending*, presents some difficulty for credit unions. Our review indicates the majority of these violations were technical. In general, members did not suffer a negative financial impact, and some members benefited from the errors.

To assist credit unions with compliance, NCUA issued Regulatory Alert 06-RA-05, Home Owners Equity Protection Act, in August 2006. This alert provides a plain English overview of changes in the threshold amounts associated with Section 32 of Regulation Z.

We have no suggestions or recommendations for changing Regulations AA, B, CC, DD, E, M, P, or Z, at this time.

As requested, a copy of this letter and supporting schedules will be provided in an electronic format to Carolyn Welch at carolyn.welch@frb.gov. If you have questions, please contact Program Officer Matthew Biliouris at (703) 518-6394 or via email at matthewb@ncua.gov.

Sincerely,

David M. Marquis, Director
Office of Examination and Insurance

EI/MJB:mb

Attachment:

2006_FRB_DataPage.xls

cc: Len Skiles, Executive Director, NCUA
Carolyn Welch, Federal Reserve Board

PREPARED STATEMENT OF

THE FEDERAL TRADE COMMISSION

on

HOME MORTGAGE DISCLOSURE ACT DATA AND
FTC LENDING ENFORCEMENT

Before the

HOUSE COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

Washington, D.C.

July 25, 2007

I. INTRODUCTION

Chairman Watt, Ranking Member Miller, and Members of the Subcommittee, I am Lydia B. Parnes, Director of the Bureau of Consumer Protection of the Federal Trade Commission ("FTC" or "Commission").[1] I appreciate the opportunity to appear before you today to discuss the Commission's efforts to combat unfair, deceptive, and other illegal practices in the mortgage lending industry, including its fair lending enforcement program.

This testimony will discuss (1) the Commission's legal authority to address illegal mortgage lending practices, including violations of the fair lending laws it enforces, and its coordination with the federal banking agencies and other law enforcers; (2) the Commission's use of the Home Mortgage Disclosure Act ("HMDA") data; and (3) the Commission's lending enforcement program and consumer education initiatives. As detailed below, the Commission has brought over two dozen fair lending cases, has several ongoing, nonpublic fair lending investigations, and has brought 21 cases to combat deceptive and unfair lending practices, focusing in particular on the subprime market and returning $320 million to consumers.

II. THE COMMISSION'S LEGAL AUTHORITY AND INTERAGENCY COORDINATION

A. The Commission's Legal Authority

The Commission has wide-ranging responsibilities regarding consumer financial issues.[2] As part of its mandate to protect consumers, the Commission enforces Section 5 of the FTC Act, which broadly prohibits unfair or deceptive acts or practices in or affecting commerce.[3] This

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1 The views expressed in this statement represent the views of the Commission. My oral presentation and responses to any questions you have are my own, however, and do not necessarily reflect the views of the Commission or any individual Commissioner.

2 The Commission's June 13, 2007 testimony before the House Committee on Financial Services enumerated in detail the agency's activities in the financial services sector. The Commission's statement is available at www.ftc.gov/os/2007/06/070613statement.pdf.

3 15 U.S.C. § 5(a).

section has provided the principal basis for much of the Commission's mortgage lending enforcement. The Commission also enforces a number of laws specifically governing lending practices, including the Equal Credit Opportunity Act ("ECOA"),[4] which prohibits discrimination against applicants for credit on the basis of race, national origin, sex, marital status, age, or other prohibited factors; the Truth in Lending Act ("TILA"),[5] which requires disclosures and establishes certain substantive requirements in connection with consumer credit transactions; and the Home Ownership and Equity Protection Act ("HOEPA"),[6] which, as part of the TILA, provides special protections for consumers in certain high-cost refinance loans secured by their homes.

The FTC Act and the other statutes that the FTC enforces specifically exempt banks, savings and loan institutions, and federal credit unions from the agency's jurisdiction.[7] The Commission, however, does have jurisdiction over nonbank financial companies, including nonbank mortgage companies, mortgage brokers, finance companies, and units of bank holding companies. As a general matter, the Commission engages in law enforcement investigations and, unlike other financial regulatory agencies, does not conduct regular examinations of the entities under its jurisdiction.

B. Interagency Coordination

In the fair lending area, the Commission coordinates closely with federal and state regulators and enforcers on enforcement, education, and policy. Last week, the FTC, along with the Federal Reserve Board ("Board"), the Office of Thrift Supervision ("OTS"), and state

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[4] 15 U.S.C. § 1691. Congress directed the Federal Reserve Board to implement the ECOA through Regulation B, 12 C.F.R. § 202.

[5] 15 U.S.C. §§ 1601-1666j.

[6] 15 U.S.C. § 1639.

[7] *E.g.*, 15 U.S.C. § 45(a)(2).

regulators, announced a pilot project to conduct targeted consumer protection compliance reviews and investigations of certain nonbank subsidiaries of bank holding companies with significant subprime mortgage operations.[8] The agencies will select a sample of entities under their respective authority and will assess compliance with key consumer protection laws, including Section 5 of the FTC Act, the TILA, and the ECOA.[9] The Commission will take aggressive enforcement action if warranted based on its findings.

For more than a decade, the FTC has been a member of the Interagency Task Force on Fair Lending, a joint undertaking with the Department of Justice ("DOJ"), the Department of Housing and Urban Development ("HUD"), and the federal banking regulatory agencies. The purpose of the task force is to work together to share information on lending discrimination and predatory lending enforcement and policy issues. The Task Force has published a Policy Statement on Lending Discrimination[10] and meets frequently to discuss fair lending issues. Task Force members also share information about developments in the law and marketplace and trends in consumer complaints. To assist coordination among federal and state enforcers, the federal banking regulators also publish model fair lending examination procedures.[11]

The FTC routinely coordinates its enforcement activities with DOJ and HUD because the FTC's fair lending jurisdiction overlaps with the jurisdiction of those agencies with respect to

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8 *See* Joint Agency Press Release, *available at* www.ftc.gov/opa/2007/07/subprime.shtm.

9 The agencies will also review compliance with the HMDA, HOEPA, and the Real Estate Settlement Procedures Act.

10 *See* Notice of Approval and Adoption of "Policy Statement on Discrimination in Lending" and Solicitation of Comments Regarding its Application, 59 Fed. Reg. 18,266 (Apr. 15, 1994).

11 "Interagency Fair Lending Examination Procedures," available at www.ffiec.gov/PDF/fairlend.pdf

nonbank independent mortgage companies. HUD has authority to enforce the Fair Housing Act[12] with respect to nonbank mortgage lenders. DOJ has authority to enforce both the ECOA and the Fair Housing Act with respect to nonbank and bank mortgage lenders if there is a pattern or practice of violations. The three agencies regularly share information about targets and collaborate on strategies for examining lender compliance to ensure that our actions do not conflict or overlap.[13]

Moreover, the Commission has provided comments and testimony to the Board regarding various issues relating to fair lending and HMDA,[14] as well as mortgage lending generally.[15] Indeed, the FTC and other federal agencies have collaborated several times to submit joint comments on fair lending issues.[16]

III. The Home Mortgage Disclosure Act and Use in FTC Enforcement

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[12] 42 U.S.C. § 3601. The Fair Housing Act also prohibits discrimination on the basis of race, national origin, religion, and sex in any housing-related transaction, including making home loans.

[13] In addition, the ECOA requires the federal banking agencies and HUD to make referrals to DOJ when the agency determines an entity has engaged in a pattern or practice of discrimination. Notice of Approval and Adoption of "Policy Statement on Discrimination in Lending" and Solicitation of Comments Regarding its Application, 59 Fed. Reg. 18,266 (Apr. 15, 1994); "The Attorney General's 2006 Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976," www.usdoj.gov/crt/housing/documents/ecoa2006.pdf.

[14] *See* FTC Comment on Federal Reserve Board Proposed Amendments to Provisions of Regulation C of the Home Mortgage Disclosure Act (March 9, 2001), www.ftc.gov/be/v010005.shtm.

[15] *See, e.g.,* FTC Comment on Federal Reserve Board Notice Regarding the Home Equity Lending Market (Sept. 14, 2006), www.ftc.gov/os/2006/09/docketop-1253commentfedreserve homeeqlenditextv.pdf; FTC Comments on Proposed Amendments to Regulation Z, Implementing the Home Ownership and Equity Protection Act (Mar. 9, 2001), www.ftc.gov/be/v010004.shtm; Prepared Statement of the Federal Trade Commission before the Board of Governors of the Federal Reserve System on Predatory Lending Practices in the Home-Equity Lending Market (Sept. 7, 2000), www.ftc.gov/os/2000/09/predatorylending.htm.

[16] *See* Joint Comment of FTC, Dep't of the Treasury ("Treasury"), DOJ, HUD, OTS, OCC, the Small Business Administration ("SBA"), and the Office of Federal Housing Enterprise Oversight Regarding Regulation B (Nov. 29, 1999); Joint Comment of FTC, Treasury, DOJ, HUD, OCC, OTS, and SBA on Regulation B (May 29, 1998); Joint Comment of FTC, Treasury, DOJ, HUD, OCC, and OTS on Regulation C (May 29, 1998).

Since 1975, certain mortgage lenders located in metropolitan areas have collected and reported to the government data regarding their housing-related loans and applications for such loans as mandated by the HMDA.[17] The HMDA reporting requirements do not impose substantive lending standards; rather, to enhance law enforcement and public understanding of national trends in mortgage lending, the statute requires the reporting of data to be made available to the public.[18]

A. HMDA's Requirements

Since its enactment, HMDA has undergone significant changes that reflect the dynamic and dramatic changes in mortgage lending, particularly in the subprime lending market.[19] Initially, HMDA required bank lenders to report mortgage loan information only by census tract. Lenders subject to the Commission's jurisdiction began reporting data in 1989, when the statute's requirements were expanded to cover nonbank lenders and to include information on the race, national origin, sex, and income level of loan applicants. In the early to mid-1990s, the focus of fair lending enforcement was whether illegal discrimination caused the higher denial

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[17] 12 U.S.C. § 2801: HMDA is implemented by the Board's Regulation C, 12 C.F.R. § 203, and a Staff Commentary. Under current regulations, non-depository institutions need only report data under HMDA if they (1) originated mortgage loans equaling at least 10 percent of their loan-origination volume, or (2) originated mortgage loans whose total dollar volume amount equals at least $25 million in the preceding calendar year. 12 C.F.R. § 203.2(e)(2). The Board staff estimates that 80 percent of home lending nationwide is covered by the law. Robert B. Avery, Kenneth P. Bevoort, and Glenn B. Canner, *Higher-Priced Home Lending and the 2005 HMDA Data*, FEDERAL RESERVE BULLETIN, 2006, at A123, A123.

[18] HMDA's specific goals are three-fold: (1) to provide the public information to judge whether lenders are providing services in their communities; (2) to promote enforcement of fair lending laws; and (3) to provide information to public and private entities seeking to invest in the housing market. Avery, *supra* n.17. To safeguard the privacy of the consumers whose loan data are reported, HMDA requires lenders to remove from their public HMDA submission the loan or application number and the application and action-taken dates.

[19] Testimony of Governor Mark W. Olson of the Federal Reserve Board, "Home Mortgage Disclosure Act" before the Subcommittee on Financial Institutions and Consumer Credit, Committee on Financial Services, U.S. House of Representatives, June 13, 2006, www.zentralbank.us./boarddocs/ testimony/2006/20060613/default.htm.

rates for minority applicants reported by many mortgage lenders in the HMDA data or whether the disparities in denials could be explained by the legitimate criteria used by lenders to make decisions on whether to approve or deny a mortgage loan.

In the late 1990s, subprime mortgage lending began to grow dramatically.[20] The enormous growth in the subprime mortgage industry is part of a broader trend of the increasing availability of credit to populations that in the past could not qualify for it.[21] Creditors increasingly used credit data to undertake risk-based pricing. This allowed them to move away from simple approval or denial of all loans towards using credit data to more finely calibrate the price of the loan and loan terms to the risk. With this growth of higher-priced loans to consumers who previously could not obtain a mortgage, fair lending concerns became more focused on whether lenders were engaged in illegal pricing discrimination on the basis of race or national origin. At the same time, the Commission increased its scrutiny of deceptive representations by subprime lenders regarding the cost and other key terms of a mortgage loan.

In response to these concerns related to mortgage loan pricing, the Board amended HMDA's implementing Regulation C to require the reporting of additional information for home loans.[22] In 2005, for the first time, lenders were required to report specific pricing information for each higher-priced loan made in 2004 based on pricing thresholds set by Regulation C.

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[20] In 1999, subprime lenders originated $160 billion in mortgage loans, while in 2006 subprime lenders originated $640 billion in mortgage loans. *Top 25 B & C Lenders in 1999*, INSIDE B & C LENDING, Feb. 14, 2000, at 2; *Top 25 B & C Lenders in 2006*, INSIDE B & C LENDING, Feb. 23, 2007, at 12.

[21] *See, e.g.,* Avery, *supra* n.17, at A125.

[22] The amendments to Regulation C setting forth the new pricing reporting thresholds took effect on December 1, 2004. *See* 12 C.F.R. 203, *et seq.* The Federal Financial Institutions Examination Council ("FFIEC") publishes and updates extended business guidance for HMDA reporters and maintains a web site (www.ffiec.gov) where all of those materials are available. *See, e.g.,* "A Guide to HMDA Reporting; Getting it Right!" available at www.ffiec.gov/hmda/guide.htm. The FFIEC is a formal interagency body empowered to prescribe uniform principles and standards for examinations by the federal banking agencies.

Specifically, lenders must report the difference (or rate spread) between the annual percentage rate ("APR") and the applicable Treasury rate on certain loans. Lenders must report first-lien loans with an APR at least 3 points above the applicable rate and must report second-lien loans with an APR at least 5 points above the applicable rate.[23] This new information allows for improved monitoring and understanding of lending activity in the higher-priced segment of the home loan market, which has been particularly susceptible to illegal lending practices.

B. Use of HMDA Data in FTC's Fair Lending Enforcement

Currently, the Commission is engaged in several ongoing, non-public fair lending investigations of mortgage lending companies. The Commission uses the HMDA data as a screening or targeting tool for fair lending compliance investigations.[24] Although some pricing data and loan applicant information are available in HMDA, the data overall are limited. For example, the data do not include the many other criteria lenders typically use to evaluate the risk of a loan, such as borrower credit scores, loan-to-value ratios, debt-to-income ratios, loan type, or the length of the loan. Thus, the HMDA data alone are insufficient to establish a law violation. Rather, the Commission uses the reported data to identify lenders with differences in outcomes for protected classes, and in particular for minorities compared to non-minorities.[25] The disparities in denial rates or pricing, however, may be explained by information on the many credit characteristics and loan terms that are not contained in the HMDA data. Consequently, the

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[23] In calculating and setting these thresholds, the Federal Reserve Board seeks to exclude the vast majority of prime-rate loans and include the vast majority of subprime-rate loans. *See* "Frequently Asked Questions about the New HMDA Data," published by the FFIEC and available at www.federalreserve.gov/boarddocs/press/bcreg/2006/20060403/attachment.pdf.

[24] Of the 8,848 institutions that reported HMDA data in 2005, 1,923 institutions are non-depository institutions. Avery, *supra* n. 17, at A129.

[25] The Federal Reserve Board provides to the Commission information and analysis regarding HMDA data reported by the lenders within the FTC's jurisdiction. The Commission staff reviews this analysis and also performs its own, independent analysis of the data.

principal goal of a fair lending investigation is to determine whether or not the differences in outcomes persist after legitimate underwriting criteria are taken into account.

Typically, an investigation begins with substantial requests for information directed to the target lender, such as requests for documents fully reflective of the target's lending operations, including its underwriting policies and procedures, the extent and nature of the loan products offered, and the role of discretion in any underwriting and pricing decisions. As part of the initial inquiry, the Commission staff also obtains the documents and data necessary to test the accuracy and integrity of the HMDA data filed by the target lender. If that data set is not accurate, the FTC staff takes steps to obtain accurate data.

After ensuring the accuracy of the data, the Commission staff then obtains from the target all of the criteria and data used by the lender to underwrite the mortgage loans. The staff investigates the underwriting model, as well as any pricing discretion the lender allows. The FTC staff economists then carefully analyze the underwriting data, employing rigorous statistical protocols, to determine whether the disparities persist after credit risk and other legitimate factors used to price the loan are taken into account. The staff also investigates whether the lender engages in fair lending compliance monitoring and may conduct interviews of current and former employees or officers of the target and other related entities possessing relevant information.

The determination of whether a law violation occurred requires the resource-intensive and careful review of all of the statistical analyses and the additional facts obtained through extensive document review and other evidentiary sources. The Commission has a strong commitment to enforcing the fair lending laws and will pursue vigorously any violations revealed by its investigations.

IV. THE COMMISSION'S LENDING ENFORCEMENT AND EDUCATION PROGRAM

The current fair lending investigations are part of a broad and aggressive law enforcement and consumer education program to protect consumers from deceptive, unfair, and otherwise illegal credit practices, particularly in the subprime mortgage market.

A. Law Enforcement

The Commission has brought over two dozen cases enforcing the ECOA's fair lending mandates against large subprime lenders, major non-mortgage creditors, as well as smaller finance companies.[26] The agency's enforcement has addressed both substantive and procedural protections afforded by the statute, from failures to comply with the adverse action notice requirement[27] and the record-keeping requirements necessary for determining fair lending

[26] Pursuant to ECOA, a violation of ECOA is deemed to be a violation of the FTC Act, and the FTC is authorized to enforce compliance with ECOA as if it were a violation of an FTC Trade Regulation Rule. 15 U.S.C. § 1691c(c) (violations of a trade regulation rule are subject to civil penalties of up to $11,000 per violation). The FTC Act does not authorize the FTC to collect civil penalties in its own right. Thus, where the Commission seeks civil penalties for alleged ECOA violations, it refers the case to the DOJ, and if DOJ declines to litigate the matter, the FTC may prosecute the matter, including the request for civil penalties. In cases where the Commission seeks equitable relief and does not seek civil penalties, it files the case by its own attorneys in federal district court. *See generally*, 15 U.S.C. § 56(a).

[27] *United States v. Sprint Corp.*, No. 04-00361 (N.D. Fla. 2004); *United States v. Action Loan, Inc.*, No. 3:00CV-511-H (W.D. Ky. 2000); *United States v. Franklin Acceptance Corp.*, No. 99-CV-2435 (E.D. Penn. 1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998); *United States v. Bonlar Loan Co., Inc.*, No. 97C-7274 (N.D. Ill. 1997); *United States v. J.C. Penney Company*, No. CV-96-4696 (E.D.N.Y. 1996).

compliance in the first instance[28] to discrimination on the basis of race,[29] marital status,[30] sex,[31] age,[32] and receipt of public assistance.[33] The Commission obtained a $1.125 million civil penalty from Sprint to settle charges that it failed to notify certain applicants for telephone service – which qualifies as credit under the ECOA – that it took adverse actions based on the consumers' credit reports in violation of ECOA and the Fair Credit Reporting Act.[34] Moreover, in a coordinated effort in 2000, the Commission, DOJ, and HUD obtained a joint settlement with Delta Funding Corporation, a national subprime mortgage lender, resolving alleged violations of

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[28] *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. 2001); *United States v. Action Loan, Inc.*, No. 03-511 (W.D. Ky. 2000); *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998) (2005 settlement resolving alleged violations of ECOA, TILA, FDCPA, and Section 5 of the FTC Act and imposing $750,000 judgment for consumer redress); *United States v. Paine Webber*, No. 92-2921 (D. Md. 1992); *United States v. Academic Int'l*, No. 91-2738 (N.D. Ga. 1991); *United States v. Barclays American*, No. 91-14 (W.D.N.C. 1991); *United States v. Tower Loan of Mississippi*, No. 90-0447 (S.D. Miss. 1990); *United States v. Blake*, No. 90-1064 (W.D. Okl. 1990); *United States v. Chesterfield*, No. 90-0347 (N.D. Al. 1990); *United States v. City Finance*, No. 90-246 (N.D. Ga. 1990).

[29] *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *United States v. Shawmut Mortgage Co.*, No. 93-2453 (D. Conn. 1993); *United States v. Academic Int'l*, No. 91-2738 (N.D. Ga. 1991).

[30] *United States v. Ford Motor Credit Co.*, No. 99-75887 (E.D. Mich. 1999); *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *Federal Trade Commission v. CIT*, No. 94-4092 (D.N.J. 1994); *United States v. Barclays American*, No. 91-14 (W.D.N.C. 1991); *United States v. Blake*, No. 90-1064 (W.D. Okl. 1990); *United States v. Chesterfield*, No. 90-0347; *United States v. City Finance*, No. 90-246 (N.D. Ga. 1990).

[31] *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *United States v. Barclays American*, No. 91-14 (W.D.N.C. 1991); *United States v. Blake*, Nos. 90-1064 (W.D. Okl. 1990) and 90-2470 (W.D. Tenn. 1990); *United States v. Chesterfield*, No. 90-0347 (N.D. Al. 1990); *United States v. City Finance*, No. 90-246 (N.D. Ga. 1990).

[32] *United States v. The Money Tree, Inc.*, No. 97-007 (M.D. Ga. 1997); *United States v. Tower Loan of Mississippi*, No. 90-0447 (S.D. Miss. 1990); *United States v. Chesterfield*, No. 90-0347 (N.D. Al. 1990); *United States v. City Finance*, No. 90-246 (N.D. Ga. 1990).

[33] *United States v. Franklin Acceptance Corp.*, No. 99-2435 (E.D. Penn. 1999); *United States v. The Money Tree, Inc.*, No. 97-007 (M.D. Ga. 1997).

[34] *United States v. Sprint Corp.*, No. 04-00361 (N.D. Fla. 2004).

ECOA, HOEPA, and the Real Estate Settlement Procedures Act.[35]

Since the late 1990s, with the dramatic growth of subprime lending, the Commission has focused on the most egregious lending practices of the nonbank lenders subject to its jurisdiction. Illegal practices in the subprime mortgage market particularly affect consumers living in lower-income and minority neighborhoods where traditional banking services are often unavailable.[36] To that end, in the last decade, the agency has brought 21 actions alleging deceptive or unfair practices against companies in the mortgage lending industry, focusing in particular on the subprime market.[37] Several of these landmark cases have resulted in large monetary judgments, collectively returning more than $320 million to consumers. The Commission actions focus on all stages of mortgage lending – from advertising and marketing through loan servicing – by mortgage lenders, brokers, and loan servicers.

In several of its major cases, the Commission alleged violations of ECOA, TILA, and

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35 *United States v. Delta Funding Corp.*, No. 00-1871 (E.D.N.Y. 2000). The complaint alleged that Delta had engaged in a pattern or practice of asset-based lending and other practices in violation of HOEPA; that higher broker fees were charged to African American females than to white males in violation of the ECOA and the Fair Housing Act, 42 U.S.C. §§ 3601-3619, and that few or no services were performed in exchange for certain broker charges in violation of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607.

36 *See* Comptroller of the Currency, *Economic Issues in Predatory Lending,* OCC WORKING PAPER, July 30, 2003, at 2.

37 *FTC v. Mortgages Para Hispanos.Com Corp.,* No. 06-00019 (E.D. Tex. 2006); *FTC v. Ranney,* No. 04-1065 (D. Colo. 2004); *FTC v. Chase Fin. Funding,* No. 04-549 (C.D. Cal. 2004); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002); *United States v. Mercantile Mortgage Co.*, No. 02-5079 (N.D. Ill. 2002); *FTC v. Associates First Capital Corp.,* No. 01-00606 (N.D. Ga. 2001); *FTC v. First Alliance Mortgage Co.,* No. 00-964 (C.D. Cal. 2000); *United States v. Action Loan Co.*, No. 00-511 (W.D. Ky. 2000); *FTC v. NuWest, Inc.*, No. 00-1197 (W.D. Wash. 2000); *United States v. Delta Funding Corp.*, No. 00-1872 (E.D.N.Y. 2000); *FTC v. Barry Cooper Prop.*, No. 99-07782 (C.D. Cal. 1999); *FTC v. Capitol Mortgage Corp.*, No. 99-580 (D. Utah 1999); *FTC v. CLS Fin. Serv., Inc.*, No. 99-1215 (W.D. Wash. 1999); *FTC v. Granite Mortgage, LLC,* No. 99-289 (E.D. Ky. 1999); *FTC v. Interstate Res. Corp.*, No. 99-5988 (S.D.N.Y. 1999); *FTC v. LAP Fin. Serv., Inc.*, No. 99-496 (W.D. Ky. 1999); *FTC v. Wasatch Credit Corp.*, No. 99-579 (D. Utah 1999); *In re First Plus Fin. Group, Inc.*, FTC Docket No. C-3984 (2000); *In re Fleet Fin., Inc.*, FTC Docket No. C-3899 (1999); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

other credit statutes. For example, the FTC's complaint against Associates First Capital Corporation and Associates Corporation of North America ("the Associates") alleged that the defendants marketed subprime mortgage loans through false and misleading statements about loan costs and failed to maintain loan applicant records as required by the ECOA.[38] The Associates represented that consumers would save money when consolidating their existing debts, but these "savings claims" did not take into account the typical loan fees and closing costs or certain "balloon" payments. The complaint also challenged as deceptive the Associates' practice of including single-premium credit insurance in loans. The defendants paid a record-setting $215 million in consumer redress to settle the FTC complaint.[39]

The Commission also alleged unfair and deceptive loan servicing practices in its lengthy litigation against Capital City Mortgage Corp. ("Capital City"), which both originated and serviced subprime mortgage loans.[40] The Commission alleged that Capital City targeted minority borrowers with fixed or low incomes with offers for loans based on the equity in their homes, rather than on the borrowers' ability to repay the loan, putting them at high risk of foreclosure. The complaint also alleged that Capital City violated ECOA by failing (1) to take written applications, (2) to collect information about the race/national origin, sex, marital status, and age of applicants for mortgage credit, and (3) to provide notice of adverse action. According to the Commission's complaint, Capital City included phony charges in monthly statements, added phony charges to loan balances, foreclosed on borrowers who were in compliance with the

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38 *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. 2001).

39 *FTC v. Associates First Capital Corp.*, No. 01-00606 (N.D. Ga. Jan. 26, 2002) (Order Preliminarily Approving Stipulated Final Judgment and Order). Defendants paid an additional $25 million to settle a concurrent class action. The Commission sought and obtained equitable monetary relief in this case so that the $215 million paid by the defendants was returned directly to consumers. As a result, the Commission did not seek civil penalties for the alleged violations of ECOA.

40 *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

terms of their loans, and failed to release liens on borrowers' homes after the loans were paid off. A settlement, reached in February 2005, permanently enjoined the defendants from future deception, required them to pay $750,000 in consumer redress, and required them to post a $350,000 performance bond to remain in the lending business.[41]

In another case against a subprime mortgage lender that alleged deceptive marketing, the Commission reached a settlement in March 2002 with First Alliance Mortgage Co. ("FAMCO"). The Commission's complaint charged that FAMCO's loan officers made deceptive claims in their sales presentations about fees and other loan terms.[42] For example, FAMCO representatives allegedly promised consumers that the loans contained no upfront fees, when in fact they imposed origination fees that were typically 10 percent of the loan amount and sometimes as high as 20 percent. The Commission ultimately obtained redress totaling over $69 million for nearly 20,000 consumers.

With mortgage brokers now originating between 65-70% of all mortgage loans,[43] the Commission has brought several enforcement actions against these entities for allegedly deceiving consumers about key loan terms, such as the existence of a prepayment penalty,[44] a large balloon payment due at the end of the loan,[45] or low "fixed" payments that were not actually fixed.[46] Most recently, in 2006, the Commission filed suit against a mortgage broker for

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[41] *Id.*

[42] *FTC v. First Alliance Mortgage Co.*, No. 00-964 (C.D. Cal. 2000). The court consolidated our complaint with cases brought by six states, AARP, and private plaintiffs.

[43] *See* NEW RESEARCH ABOUT MORTGAGE BROKERS PUBLISHED (July 28, 2005), and other data, available at www.wholesaleaccess.com.

[44] *FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

[45] *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

[46] *FTC v. Chase Fin. Funding*, No. 04-549 (C.D. Cal. 2004); *FTC v. Diamond*, No. 02-5078 (N.D. Ill. 2002).

allegedly deceiving Hispanic consumers who sought to refinance their homes by misrepresenting numerous key loan terms.[47] The alleged conduct was egregious – a lender conducting business with his clients almost entirely in Spanish, and then providing at closing loan documents in English containing the less favorable terms.[48]

The Commission also has challenged allegedly deceptive and unfair practices in the servicing of subprime mortgage loans.[49] For example, in November 2003, the Commission, along with HUD, announced a settlement with Fairbanks Capital Corp. and its parent company. Fairbanks (now called Select Portfolio Servicing, Inc.) had been one of the country's largest third-party subprime loan servicers – it did not originate any loans, but collected and processed payments on behalf of the holders of the mortgage notes. The Commission alleged that Fairbanks failed to post consumers' payments upon receipt, charged unauthorized fees, used dishonest or abusive tactics to collect debts, and reported consumer payment information that it knew to be inaccurate to credit bureaus. To resolve these charges, Fairbanks and its former chief executive officer paid over $40 million in consumer redress, agreed to halt the alleged illegal practices, and implemented significant changes to company business practices to prevent future violations.[50]

The Commission is continuing to investigate companies in the mortgage lending industry,

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47 *FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. 2006).

48 *FTC v. Mortgages Para Hispanos.Com Corp.*, No. 06-00019 (E.D. Tex. Sept. 25, 2006) (Stipulated Final Judgment and Order of Permanent Injunction) (entering suspended judgment of $240,000 and ordering payment of $10,000 based on documented inability to pay full judgment amount).

49 *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. 2003); *FTC v. Capital City Mortgage Corp.*, No. 98-00237 (D.D.C. 1998).

50 *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Nov. 21, 2003) (Order Preliminarily Approving Stipulated Final Judgment and Order as to Fairbanks Capital Corp. and Fairbanks Capital Holding Corp.); *United States v. Fairbanks Capital Corp.*, No. 03-12219 (D. Mass. Nov. 21, 2003) (Stipulated Final Judgment and Order as to Thomas D. Basmajian).

focusing in particular on the subprime market.

B. Consumer Education

Of course, educated consumers are the first line of defense against fraud and deception. This is especially true for subprime borrowers, given the complexity of the loan transaction and many borrowers' limited experience in obtaining mortgages.

The Commission has implemented extensive programs to educate consumers about financial literacy generally, and subprime borrowing specifically, including a plain English brochure setting forth consumer rights under the fair lending laws, called "Mortgage Discrimination."[51] The Commission also has included educational materials on mortgage loans in numerous redress distributions. For example, when the Commission mailed over 800,000 redress checks to claimants in our case against The Associates, it included a bookmark containing tips for shopping for a home equity loan. Most recently, in the wake of reports of rising mortgage delinquencies, the Commission published an alert with guidance on steps borrowers can take to avoid foreclosure.[52]

The Commission regularly partners with other enforcers to educate consumers. The FTC has jointly published with the banking regulators, DOJ, and HUD brochures addressing key lending issues, including brochures such as "Looking for the Best Mortgage? Shop, Compare, and Negotiate."[53] The FTC also continues to participate in the governmental Financial Literacy and Education Commission, contributing its expertise to subcommittees that produced

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[51] www.ftc.gov/bcp/conline/pubs/homes/mortgdis.pdf (English version); www.ftc.gov/bcp/conline/spanish/homes/s-mortgdis.shtm (Spanish version). All of the Commission's mortgage and real estate-related publications, many in both English and Spanish, are available online at www.ftc.gov/bcp/menus/consumer/credit/mortgage.shtm.

[52] "Mortgage Payments Sending You Reeling? Here's What to Do", *available at* www.ftc.gov/bcp/edu/pubs/consumer/homes/rea04.shtm.

[53] www.ftc.gov/bcp/conline/pubs/homes/bestmorg.shtm.

MyMoney.gov and "Taking Ownership of the Future: The National Strategy for Financial Literacy."[54]

V. CONCLUSION

The Commission will continue to take aggressive and concerted action to halt illegal practices in the marketplace, while mindful of the important benefits that increased access to credit brings consumers. Through our enforcement and education, the Commission works to protect consumers in the subprime lending market and to enforce the fair lending laws.

[54] In addition, each April, the FTC participates in Financial Literacy Month. Activities include presentations to students on the importance of responsible credit card use and safeguarding personal information, and exhibits at Financial Literacy Day on Capitol Hill, where agency representatives distribute free consumer education materials.

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STATEMENT OF MR. HILARY O. SHELTON
DIRECTOR, NAACP WASHINGTON BUREAU
ON "ROOTING OUT DISCRIMINATION IN MORTGAGE LENDING: USING HMDA AS A TOOL FOR FAIR LENDING ENFORCEMENT"
BEFORE THE HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

July 25, 2007

Thank you. My name is Hilary Shelton and I am the Director of the NAACP Washington Bureau, the federal public policy advocacy arm of our Nation's oldest, largest and most widely recognized grassroots civil rights organization.

I am very pleased to be here today to talk to you about the Home Mortgage Disclosure Act, HMDA, and its use in uncovering trends of discrimination in home lending. It is especially an honor to speak before Chairman Watt, who is indisputably one of the Congressional leaders in the fight against predatory lending, and a champion of civil rights for all Americans. I would like to thank you, Chairman Watt, as well as all the distinguished members of this panel, for all you are doing to eradicate the plague of predatory lending.

Predatory lending is unequivocally a major civil rights issue of our time.

As study after study has conclusively shown, predatory lenders target African Americans, Latinos, Asians and Pacific Islanders, Native Americans the elderly and women at such a disproportionate rate that the effect is devastating to not only individuals and families, but whole communities as well. Predatory lending stymies families' attempts at wealth building, ruins people's lives and, given the disproportionate number of minority homeowners who are targeted by predatory lenders, decimates whole communities.

High concentrations of subprime lending in predominantly racial and ethnic minority neighborhoods and racial disparities in subprime lending exist in all regions of the nation. And, while not all subprime loans are predatory (indeed the NAACP recognizes the benefits of the subprime market to an informed constituency which includes many without a strong traditional credit history), it is estimated that the vast majority of predatory loans, or those with onerous fees and / or conditions, exist in the subprime market.

And while many of the facts that I have just shared with you are common knowledge in our communities, they are also, thanks to the Home Mortgage Disclosure Act, verifiable facts.

First enacted in 1975, HMDA was enacted to provide the public with data on mortgage lending patters. Since that time, HMDA has become an invaluable tool in helping the NAACP and other civil rights and consumer rights organizations in the fight to eliminate discrimination in mortgage lending.

As a result of HMDA, we have several seminal reports, including the Center for Responsible Lending's 2006 report, "*Unfair Lending, the Effect of Race and Ethnicity on the Price of Subprime Mortgages*" which used the 2004 HMDA data, "*Stubborn and Persistent*" and "*Stubborn and Persistent II*" an analysis of the 2004 and 2005 HMDA data by the National Community Reinvestment Coalition and "*Risk or Race*", the 2003 report by Calvin Bradford for the Center for Community Change to name a few.

As a result of these reports, and their analysis of HMDA data, we can say conclusively that African American and Latino borrowers received a disproportionate share of higher cost home loans, even when controlling for factors such as borrower income and property location and that this disparity rises as income rises.

And while it offers little solace to know that the anecdotal stories we have heard all along from our communities about unfair lending are true, it does help us deal with the problem.

Specifically, in addition to civil rights groups using HMDA data to focus national attention on lending discrimination issues, HMDA data is used by local municipalities when developing fair housing programs, and should be used by federal banking regulatory agencies, the US Department of Housing and Urban Development (HUD), the Department of Justice (DoJ) and the Federal Trade Commission (FTC) to boost enforcement of fair lending laws.

HMDA data is also proving useful in litigation against unfair lenders, and is a key component in the case recently filed by the NAACP alleging systematic, institutionalized racism in sub-prime home mortgage lending.

Like most good laws, however, HMDA could be improved upon. Specifically, the NAACP feels that the data would be greatly improved if the age of borrowers were included, as well as the type of credit. The purpose of this second request is to determine if a mortgage broker was used, as steering is an especially prevalent problem in our communities.

The NAACP, in collaboration with some of our allies who do some of the most in-depth analysis of the HMDA data, would also like to see more detailed pricing and underwriting information for subprime lenders in their HMDA data. Not only would this provide us with more detailed information, it would also help to discourage pricing discrimination.

Specifically, knowing the incidence and rate of up-front fees, yield spread premiums and prepayment penalties would be significantly helpful in assessing the full breadth of subprime loans and who is receiving them.

Finally, the NAACP would like to see more enforcement on the part of the federal government as a result of the HMDA data. Despite the clear evidence of discrimination, which is illegal, the federal agencies that regulate insured depository institutions, have done little or nothing to eliminate discrimination in the mortgage market. Furthermore, the NAACP calls upon HUD and DoJ to enforce our Nation's fair lending laws; enforcement activity which has come to almost a stand-still since 2000.

In closing, HMDA is an invaluable tool for many civil and consumer rights organizations, as well as federal, state and local regulators in identifying and fighting discriminatory lending practices, and the NAACP is pleased to testify in support of this crucial law.

I would now welcome any questions you may have.

Making Homeownership Fair: The Role of Fair Lending Enforcement in Promoting Sustainable Latino Homeownership

Submitted to:

U.S. House of Representatives Committee on Financial Services
Subcommittee on Housing and Community Opportunity

Submitted by:

Saul Solorzano, Executive Director
Central American Resource Center (CARECEN)

CARECEN
1460 Columbia Road, NW. C-1
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July 25, 2007

My name is Saul Solorzano, and I am the Executive Director of the Central American Resource Center (CARECEN), located in Washington, D.C. My organization has a team of committed staff members whose work includes advocating for greater housing opportunities for this nation's hardworking Latino families. On behalf of CARECEN and the Latino community we serve, I am pleased to present our views for this hearing, "Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement." I thank Chairman Watt, Ranking Member Miller, and the other the members of this committee for taking the lead in holding a hearing on this issue. The commitment of this committee to the principles of fair housing is clear, and much appreciated by our community.

CARECEN is a community based organization originally established to provide legal immigration services to Central Americans who were fleeing from human right violations and civil war in the1980s. Now, CARECEN serves all Latinos in the Washington metropolitan area and runs four programs in the areas of immigration, citizenship, housing and education. As part of our housing program, we provide credit and housing counseling, and prepare potential home buyers to learn about mortgage loans, and budget management. Additionally, we provide technical assistance to tenant associations that are in the process of buying multi-family buildings. CARECEN also refers cases involving potential fair housing discrimination to the Equal Rights Center and the Washington Lawyers Committee for Civil and Human Rights, both in Washington, DC.

During this fiscal year, CARECEN became one of 37 affiliates of the National Council of La Raza's National Homeownership Network (NHN). The National Council of La Raza (NCLR) has been a national intermediary designated by the Department of Housing and Urban Development (HUD) to distribute funds for housing counseling. The NCLR Homeownership Network (NHN) consists of 37 NCLR affiliates in 20 states which provide pre-purchase bilingual homeownership counseling to low-income families in predominately Latino neighborhoods. NHN counsels more than 20,000 families each year, of which more than 3,500 become homeowners. NHN has sophisticated partnerships with some of the nation's largest providers of home mortgages such as Bank of America, Countrywide, JPMorgan Chase, Washington Mutual, Wells Fargo, Fannie Mae, and Freddie Mac.

For over 10 years, CARECEN has worked to create opportunities for Latinos and other underserved communities to access homeownership. For example, CARECEN is providing development assistance to a cooperative association in Washington, DC and has already helped to secure the purchase of a multifamily building (147 units) and a construction loan to upgrade the building which later will be turned into a condominium. The condominium will have at least 100 units to be sold to current members at an affordable, inside price. As you well know, homeownership is a critical wealth-building tool for our families. Their home is their ticket to a secure retirement, or a chance at a better life for their children. Unfortunately, lending discrimination persists in the mortgage market and, as a result, many Latino families are seeing their financial safety-net eroded.

The Need for Fair Housing Enforcement

Discrimination against Latino home-seekers is not a new issue, and given the current backlash against immigrants, we have reason to believe that it may be intensifying. For example, in 2000 the Department of Housing and Urban Development released a study using paired testing to gauge incidences of discriminatory acts whereby a minority and a White tester are given identical financial information and apply for the same apartment or home loan. The study found that nearly one in five Hispanic homebuyers and more than one in four Hispanic renters experience some act of discrimination while searching for their new home.[1] While discrimination against Hispanic homebuyers had decreased since the previous HUD-sponsored report (completed in 1989), the incidence of discrimination against Hispanic renters rose, while the same figures fell for other renters. This is troubling in light of the important contribution that Hispanic families make to the renting market, accounting for just over 17% of all renters.

Other evidence suggests a potential rise in housing discrimination against Latinos nationwide. In response to what can only be called a backlash against hardworking immigrant families, some local municipalities have selectively enforced their zoning laws to target Latino families. In 2004, for example, the Department of Justice (DOJ) settled a case against Bound Brook, New Jersey, in which an elected official was found using an Internet chat site to solicit addresses of Latino-occupied units for selective housing code enforcement. In other areas, cities have passed new laws that are designed to keep large immigrant families out of their neighborhoods. The *Washington Post* recently reported that Latino families are targets of housing-related complaints and searches that are without merit (determined by the fact that no infractions of the code were found).[2] In addition, analysis of the 2004 Home Mortgage Disclosure Act data confirms earlier research and findings that Latinos and other minority and low-income families are disproportionately receiving higher-cost home loans, even when controlling for key loan characteristics such as income, loan amount, property location, co-applicant, and gender.[3] Some colleagues and friends in the housing advocacy community tell us that based on 2005 HMDA data, they have not seen any evidence that this disturbing trend is in decline.

Local ordinances approved recently in Prince William and Loudoun counties in Virginia are most likely to aggravate discrimination faced by Latinos. Why? Because on the one hand, some vocal activists are bringing their anti-immigration agenda disguised under "overcrowded home" enforcement initiatives and on the other, extended family members choose to live under the same roof to make it possible to pay for mortgages a single family can not afford. Many Latino families—which, by the way, reside legally in the country—and others who are also US citizens will be victimized not only once, but twice, or even three times. A family who has been a victim of predatory lending and is paying for an overpriced home with a high mortgage—or higher interests—will have to deal with foreclosure, fines and potential displacement.

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[1] Turner, M.A., S.L. Ross, G.C. Galster, and J. Yinger, *Discrimination in Metropolitan Housing Markets: Phase 1.* U.S. Department of Housing and Urban Development, 2002.

[2] McCrummen, Stephanie, "Concerns Persist About Manassas Anti-Crowding Efforts," *The Washington Post*, Thursday, February 23, 2006, VA15; and Stewart, Nikita, "Prince William Sizes Up Crowded Housing Problem," *The Washington Post*, Wednesday, February 22, 2006, B02.

[3] Ernst, Keith and Debbie Goldstein, "Comment on Federal Reserve Analysis of Home Mortgage Disclosure Act Data." Washington, DC: Center for Responsible Lending, September 14, 2005.

Housing discrimination is a major societal concern and undermines the fundamental American commitment to equal opportunity under the law, and for that reason alone society should be committed to its eradication. That said, there are more readily tangible harms to victims and communities as a result of discrimination. The most obvious and measurable is segregation. Major studies of segregation patterns have identified a trend of rising segregation levels after an historical low in the mid-1980s. Neighborhood segregation contributes to cycles of poverty, segregated and underperforming schools, and decreased access to city services and jobs. Moreover, limited housing mobility undermines wealth creation and economic mobility.[4]

Lending Discrimination

Allow me to share with you the story of Mr. and Mrs. Sanchez. The couple settled in the Washington, D.C. area after fleeing the civil war in their home country of El Salvador. After ten years of hard work, the Sanchezes decided to purchase their first home. Eager to find their dream home, they were unaware of the discriminatory tactics being used against them. Their lender quickly identified the couple as first-time homebuyers and steered them into an overpriced home loan. Even though Mr. and Mrs. Sanchez had paid their bills on time for years, they had never had a credit card. Their lack of credit history made them an easy target for a predator set on steering them into a loan that was highly profitable. Not only did the couple waste their hard earned money on unnecessarily high fees—money that could have been spent on home improvement projects—but they found themselves in a loan situation that quickly became unaffordable. The Sanchez came to our office three weeks ago, 50 days behind on their mortgage payment.

The experience of the Sanchezes is one example of the story the HMDA data tells us. Several studies have documented the fact that Latinos are more likely to receive high cost mortgages, even when controlling for contributing factors. The Federal Reserve found 200 lenders whose HMDA data appeared suspicious, yet no enforcement action has come from any of the regulatory agencies. Moreover, more can be done to leverage the HMDA data collection system to better inform public policy and enforcement capacity. HMDA does not collect loan-to-value ratios, co-applicants, type of loan program and documentation standard (such as Adjustable Rate Mortgages or Stated-Income), or credit information. The data must include enough information to hold lenders accountable and be easily accessed by community-based organizations.

Current Enforcement System

Clearly the need for an effective fair housing system has never been greater. Regrettably, the current fair housing system has fallen short of the needs of the Latino community in three key ways.

- **Many Latinos are unaware of their rights.** Because there have historically been so few Latino-focused community-based organizations involved in fair housing outreach,

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[4] See: Logan, John R., *Separate and Unequal: The Neighborhood Gap for Blacks and Hispanics in Metropolitan America.* University of Albany, Lewis Mumford Center for Comparative Urban and Regional Research, 2002; Sandoval, Juan Onesimo, Hans P. Jonson, and Sonya M. Tafoya, "Who Is Your Neighbor: Residential Segregation in California," *California Counts* 4(1), 2002; Orfield, Gary and Chungmei Lee, *Brown at 50: King's Dream or Plessy's Nightmare?* Harvard University Civil Rights Project, 2004; and Orfield, Gary, *Housing Segregation: Causes, Effects, Possible Cure.* Harvard University Civil Rights Project, 2001.

education, and testing, there is a lack of a cultural awareness of the civil rights enforcement system in general and the fair housing system in particular. The result is that many Hispanics who encounter housing bias may not recognize it when it occurs. The National Fair Housing Alliance's (NFHA) *2003 Fair Housing Trends Report* estimates that, based on HUD findings of a 27% discrimination rate against Hispanic renters and on the average number of Hispanic families who move each year, Hispanics alone probably encounter at least 441,085 incidents of discrimination a year. However, there were only 25,000 total claims filed on behalf of all protected classes during 2002.[5] Further, many federal and local offices, as well as agencies funded by the Federal Housing Initiative Program and the Federal Housing Assistance Program (the two major federal sources for fair housing funding), lack bilingual staff and materials, which inhibits effective outreach to the Hispanic community; and many Latino families do not understand their rights, are reluctant to report discrimination, or do not receive information about subsidized housing programs.

- **Enforcement systems do not meet the needs of victims of housing discrimination effectively.** Despite the widespread discrimination encountered by Latinos in the housing market, there is substantial evidence that the fair housing enforcement system fails to adequately enforce their rights. For example, Hispanics are severely underrepresented in federal charge caseloads and litigation and in complaints filed with state-local enforcement agencies and private fair housing groups. A review of the U.S. Department of Justice's publicly-available case summaries for housing and civil rights enforcement, for example, reveals that it has pursued only 22 fair housing cases involving Latino plaintiffs between 2000 and January 30, 2004 and filed one "amicus curiae" brief out of more than 180 cases.[6] This litigation on behalf of Hispanics constituted less than 13% of all DOJ's caseload over this period. The fair housing system relies heavily on victims reporting incidents of discrimination, which requires victims to know their rights, to realize they have been discriminated against, and to be comfortable reporting the incident. Immigrants in particular face considerable intimidation when filing a complaint. We have heard many reports from community organizations that landlords or homebuying agents threaten to have families deported, even when a family is legally present and the threat is baseless. These intimidation tactics only serve to keep all Latinos from trusting the fair housing system. In the fair lending arena, the effectiveness of fair lending testing is limited to the pre-application phase.

- **Funding for fair housing has not been a priority.** Unfortunately, Latinos have not been welcomed as mainstream stakeholders in the fair housing system. As a result, there is a lack of mainstream fair housing agencies that have the capacity to serve the Latino community effectively, and even fewer Latino community-based organizations are engaged in the field of fair housing. Although anecdotal evidence suggests that a significant number of mainstream fair housing agencies have some capacity to serve the Hispanic community, it is still far from the norm for Latinos or other bicultural or

[5] *2003 Fair Housing Trends Report*, National Fair Housing Alliance.
[6] U.S. Department of Justice, *Case Summaries*, 2004. World Wide Web page <www.usdoj.gov/crt/housing/documents/casesummary.htm>.

bilingual staff to be proportionately represented in such agencies. NCLR research shows that Latino-serving agencies do not receive the funds they need to adequately reach the Latino community. The funds they do receive are more often focused on outreach but not on enforcement. Given recent demographic changes and the research findings documenting a high incidence of housing discrimination against Hispanics, one might expect a substantial portion of funding to be targeted to agencies building Latino-focused capacity, or Hispanic organizations seeking to build fair housing capacity, or both.

Recommendations

- **Make fair housing a priority.** Congress must increase funding available for all fair housing programs. Funds should be directed to education and outreach to underserved populations, such as immigrants and language minorities, and to enforcement of fair housing and fair lending laws. CARECEN supports using paired-testers serving as part of a fair housing test as a method of rooting out incidences and patterns of discrimination. Congress should create an exemption from the fraud standard to allow paired-testers in fair lending trials to go beyond the pre-application phase. Finally, we also recommend that HUD, DOJ, and the bank enforcement agencies partner with civil rights organizations to launch a broad, public education campaign in multiple languages to inform families about their rights under the fair housing act.

- **Enhance HMDA data and collection system.** HMDA data is a powerful tool for enforcing fair housing violations, as well as holding lenders to a high level of accountability. However, more needs to be done to complete the picture and make the data readily available to the public. CARECEN supports previous recommendations to create an advisory board that would provide advice and feedback to the regulatory agencies regarding enforcement strategies and the loan variables that should be collected. Regulatory agencies must collect more information, such as the origination source of a loan, the loan-to-value ration, loan type and documentation, credit, and other data, to detect discrimination.

- **Get the Community Involved.** Clearly, there are not enough resources to combat lending and housing discrimination. Federal enforcement agencies, private nonprofit fair housing grantees, and state and local enforcement agencies must work with community-based institutions that have their community's trust and confidence. This can be done by sponsoring enforcement taskforces at the state and local level that bring together all stakeholders, as well as by fostering pilot programs that train community-based organizations to spot discrimination and file complaints.

Conclusion

Discrimination in the housing market continues to undermine the efforts of organizations, such as CARECEN, to build wealth in underserved communities. CARECEN appreciates the commitment of this committee to the ideals of equal access, and we trust that members of Congress will recognize the urgent need to stop these unfair practices and will act on their commitment to make fair housing a priority. We stand ready to work with you in any way we can.

NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

Testimony of John Taylor

President and CEO

National Community Reinvestment Coalition

Before the Oversight and Investigations Subcommittee of the House Financial Services Committee

Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement

July 25, 2007

NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

Introduction and Executive Summary

Good afternoon, Chairman Watt and Ranking Minority Member Miller, I thank you for the honor and opportunity to present testimony today on behalf of the National Community Reinvestment Coalition (NCRC) on this important topic. NCRC is the nation's economic justice trade association of 600 member organizations dedicated to increasing access to capital and credit for working class and minority communities.

Over the years, the federal regulatory agencies have succeeded in preserving the profitability and vitality of one of the world's most enviable banking systems. Their oversight in this regard is to be commended. The regulatory agencies, however, have not devoted an equal amount of effort to protect financially vulnerable consumers and homebuyers.

The objective of regulatory oversight must be to create or promote healthy and competitive markets for all consumers, regardless of color, income, age, or gender. We have a saying at NCRC that we strive to make "capitalism" work in all communities. In line with this saying, we believe the nation's regulators must ensure that responsible lenders are competing vigorously and offering a high degree of product choice in all communities.

Unfortunately, the reality in our country remains one of a dual lending marketplace in which white and affluent communities enjoy a wide range of product choice while minority and working class communities are stuck with the high-cost home mortgage lenders, the check cashers, the payday outlets, and the car title lenders. It is unfortunate that the nation's most financially vulnerable and fragile consumers receive starkly inferior access to mainstream financial services and regulatory protection that could help them better leverage their limited resources and improve their financial wellbeing.

HMDA data has been a vital tool over the years not only for enforcement activities of the federal agencies but also the fair lending enforcement carried out by nonprofit community-based organizations. Markets work best when they are transparent; when information on prices and treatment of consumers is clear and publicly available. By removing the veil of secrecy and shinning a public spotlight on financial institutions' lending activities, HMDA data has reduced the amount of discrimination and abuse in the marketplace. Yet, as powerful as HMDA data has been in the efforts to stop discrimination, the full potential of HMDA has not been realized because key data elements remain missing from HMDA data.

NCRC's testimony will describe in detail how fair lending and consumer protection regulation has failed adequately to protect consumers. The federal agencies have taken some important and initial steps this year, but the fair lending and consumer protection regulatory infrastructure remains incomplete. In the face of unprecedented regulatory

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failure, resulting in potentially more than two million foreclosures and the loss of more than a hundred billion dollars of consumer housing wealth, only modest additional enforcement efforts are even beginning to take shape.

Last year, the House Financial Services Committee had a hearing on HMDA and regulatory oversight. We are pleased that you are holding this important hearing again this year and hope that these hearings lead to concerted action since we are facing a predatory lending crisis. In 2006, there were more than 1 million families in foreclosure and this year, there are already more than 925,000 families in foreclosure.

The Dual Lending Marketplace

A looming foreclosure crisis confronts America as lending institutions have engaged in new forms of dangerous high-cost lending. As this committee knows, most of the high-cost or subprime lending made in recent years feature adjustable rate mortgages (ARMs) with low "teaser" rates for the first few years followed by rapidly rising rates. Incredibly, many lenders assessed borrowers' abilities to repay only at the low teaser rates. These loose underwriting standards have created the conditions for a perfect storm as almost 2 million of the ARM loans will re-set or start adjusting upward from their initial rates in 2007 and 2008.[1]

A particularly disturbing aspect of this lending is the fact that a disproportionate share of it has fallen on the backs of many of the most financially vulnerable households: modest income and minority families. NCRC released a report this month entitled *Income is No Shield Against Racial Differences in Lending*. Using HMDA data from 2005 (the most recent year available for industry-wide data), NCRC observes striking racial disparities in high-cost lending. If a consumer is a minority, particularly an African-American or a Hispanic, the consumer is most at risk of receiving a poorly underwritten high-cost loan.

Middle-class or upper-class status does not shield minorities from receiving dangerous high-cost loans. In fact, NCRC observes that racial differences in lending increase as income levels increase. In other words, middle- and upper-income (MUI) minorities are more likely relative to their MUI white counterparts to receive high-cost loans than low- and moderate-income (LMI) minorities are relative to LMI whites. Mainstream media has carried hundreds of articles on the predatory lending debacle facing the country – some of which have focused on the disproportionate impact of the crisis on middle-income minority consumers. The Wall Street Journal, for example, recently wrote a poignant and detailed article describing widespread foreclosures due to predatory lending in Detroit's middle-income African-American communities.[2]

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[1] "Regulators are Pressed to Take Tougher Stand on Mortgages," by Gregg Hitt and James R. Hagerty, Wall Street Journal, March 23, 2007

[2] Mark Whitehouse, "A Day of Reckoning Subprime Aftermath: Losing the Family Home – Mortgages Bolstered Detroit's Middle Class Until Money Ran Out," Wall Street Journal, May 30, 2007, page A1.

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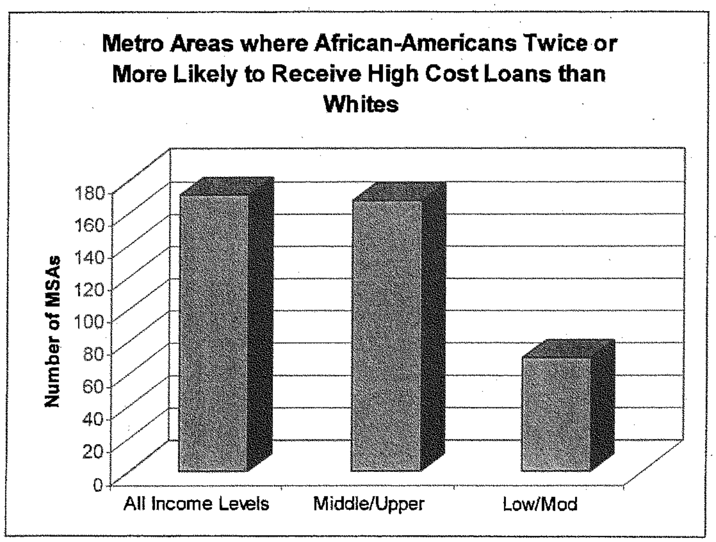
NCRC has consistently maintained the position that responsible high-cost lending serves legitimate credit needs. Higher-cost loans compensate lenders for the added risk of lending to borrowers with credit imperfections. However, wide differences in lending by race, even when accounting for income levels and credit quality, suggests that more minorities are receiving high-cost loans than is justified based on financial criteria. Previous studies by NCRC and others suggest that minorities are, in fact, receiving a disproportionately large amount of high-cost loans, after controlling for creditworthiness and other housing market factors. When minorities receive a disproportionate amount of high-cost loans, they lose substantial amounts of equity through higher payments to their lenders. In addition, they are more exposed to irresponsibly underwritten ARM loans.

The lending disparities for African-Americans were large and increased significantly as income levels increased. In the *Income is No Shield* report, we found that African-Americans of all income levels were twice as likely or more than twice as likely to receive high-cost loans as whites in 171 metropolitan statistical areas (MSAs) during 2005. MUI African-Americans were twice as likely or more than twice as likely to receive high-cost loans as MUI whites in 167 MSAs. In contrast, LMI African-Americans were twice as likely or more than twice as likely to receive high-cost loans as LMI whites in 70 MSAs. Moreover, MUI African-Americans receive a large percentage of high-cost loans. In 159 metropolitan areas, more than 40% of the loans received by MUI African-American were high-cost loans.



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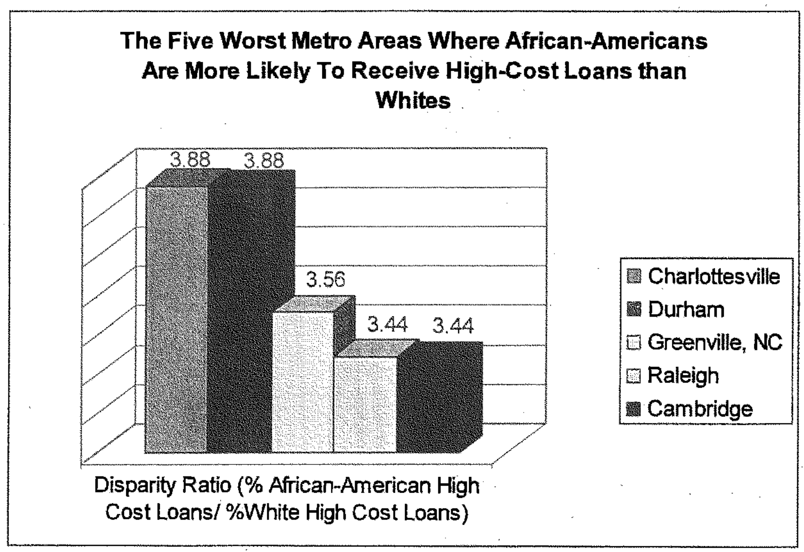
Considering all the metropolitan areas across the country, NCRC's report found that Charlottesville, VA; Durham, NC; Greenville, NC; Raleigh, NC; and Cambridge, MA had the largest overall lending disparities for African-Americans. In each of these MSAs, African-Americans were 3.4 times or more likely than whites to receive high-cost loans.

Mr. Chairman, North Carolina metropolitan areas were three of the five worst metropolitan areas in terms of African-American/white disparities. Moreover, in Charlotte, which is in your district, MUI African-Americans were 2.91 times more likely than MUI whites to receive high-cost loans.



Hispanics also experienced greater disparities in high-cost lending compared to whites as income levels rose. LMI Hispanics were twice or more likely to receive high-cost loans than LMI whites in 10 MSAs. MUI Hispanics were twice or more likely to receive high-cost loans than MUI whites in 75 MSAs. In addition, the percentage of high-cost loans received by MUI Hispanics was high. For MUI Hispanics, more than 40% of the loans received were high-cost in 71 MSAs and more than 30% of the loans received were high-cost in 137 MSAs.

The five worst metropolitan areas for overall Hispanic/white lending disparities are Cambridge, MA; Boulder, CO; San Francisco, CA; Essex County, MA; and Barnstable Town, MA. In each of these areas, Hispanics are 2.9 times or more likely than whites to

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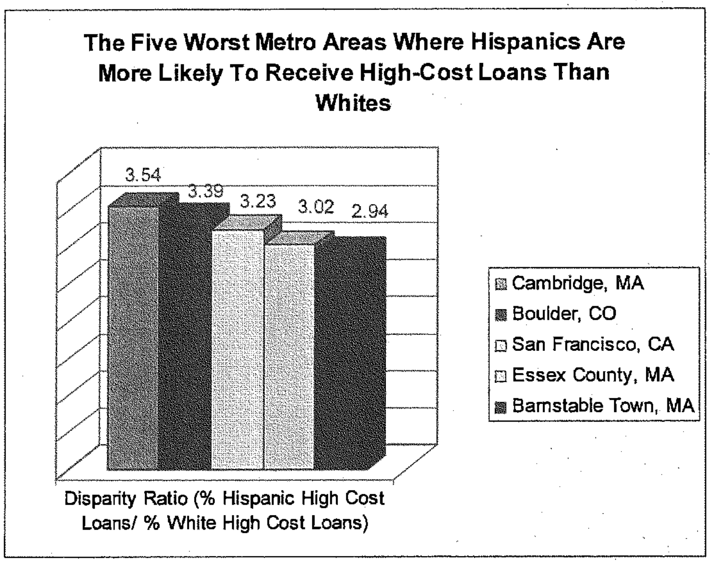
receive high-cost loans. Three of the worst metropolitan areas are in the home state of the Chairman of the House Financial Services Committee.



Some financial trade associations, particularly the Mortgage Bankers Association, were quick to criticize NCRC's *Income is No Shield Study* as a simplistic study that failed to control for creditworthiness and other important underwriting variables. The technical validity of their criticism is to some extent, accurate. But the point is nevertheless meaningless to public policy. The financial trade associations have repeatedly and continue adamantly to oppose enhancing HMDA data with additional critical variables that would enable the Federal Reserve and other agencies to immediately identify potentially illegal disparities.

Actions to preclude our ability to understand more clearly where illegal actions are occurring should not be rewarded by dismissing studies that reach compelling and insightful findings with the limited data available. Rather than dismissing our findings, Congress should address the concern raised by the Mortgage Bankers Association by adding variables to the HMDA database that will allow all participants in the housing markets to understand better what is actually occurring. That way, important Hearings, such as this one, can focus on addressing the obvious and significant problems that exist rather than debating the existence of real and legitimate concerns.

On a one-time basis, NCRC was able to obtain creditworthiness data and combine it with HMDA data in our *Broken Credit System* study released in early 2004. NCRC selected

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ten large metropolitan areas for the analysis: Atlanta, Baltimore, Cleveland, Detroit, Houston, Los Angeles, Milwaukee, New York, St. Louis, and Washington DC. As expected, the number of subprime loans increased as the amount of neighborhood residents in higher credit risk categories increased. After controlling for risk and housing market conditions, however, the race and age composition of the neighborhood had an independent and strong effect, increasing the amount of high cost subprime lending. In particular:

- The level of refinance subprime lending increased as the portion of African-Americans in a neighborhood increased in nine of the ten metropolitan areas. In the case of home purchase subprime lending, the African-American composition of a neighborhood boosted lending in six metropolitan areas.

- The impact of the age of borrowers was strong in refinance lending. In seven metropolitan areas, the portion of subprime refinance lending increased solely when the number of residents over 65 increased in a neighborhood.

In addition to the NCRC report, two studies conducted by Federal Reserve economists found that subprime lending increases in minority neighborhoods after controlling for creditworthiness and housing market conditions.[3] The Center for Responsible Lending also recently used HMDA data with pricing information to reach the same troubling conclusions that racial disparities remain after controlling for creditworthiness.[4]

NCRC strongly believes that additional underwriting variables such as creditworthiness need to be added to the HMDA data. But until this data becomes regularly available, the existing evidence and research suggests that the burden lies upon skeptics to disprove that market barriers including discrimination have impeded equal access to fairly priced loans for minorities and other protected classes.

Mystery Shopping Corroborates HMDA Disparity Findings

Non-HMDA data evidence provides strong support to the NCRC HMDA data findings. NCRC has a civil rights enforcement division that engages in mystery shopping, which has consistently uncovered disparate pricing and treatment for minorities with the same or better qualifications than whites. NCRC has reached these findings regardless of whether the financial institutions tested are brokers, mortgage companies, or other types of financial institutions.

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[3] Paul S. Calem, Kevin Gillen, and Susan Wachter, *The Neighborhood Distribution of Subprime Mortgage Lending*, October 30, 2002. See also Paul S. Calem, Jonathan E. Hershaff, and Susan M. Wachter, *Neighborhood Patterns of Subprime Lending: Evidence from Disparate Cities*, in Fannie Mae Foundation's Housing Policy Debate, Volume 15, Issue 3, 2004 pp. 603-622.

[4] Center for Responsible Lending, *Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages*, see http://www.responsiblelending.org/issues/mortgage/reports/page.jsp?itemID=29371010

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From 2004 to 2006, NCRC conducted mystery shopping of mortgage brokers, both large and small. Posing as loan seekers, both White testers (the control group) and Black or Hispanic testers (the protected group) met with and called local brokers to inquire about their loan options. The protected-class testers were actually given more attractive profiles in terms of their amount of equity, credit standing and employment tenure, and should have logically received better treatment. Instead, NCRC's fair lending testing of mortgage brokers uncovered a 46% rate of disparate treatment based on race and national origin.

NCRC's broker testing yielded 106 total complete, matched-pair tests. Individuals located in the metropolitan areas of Atlanta, Baltimore, Chicago, the District of Columbia, Houston, Los Angeles and Saint Louis tested brokers that were local, established businesses. In conducting the broker testing, NCRC found several companies with particularly egregious initial results. In these cases, testers were again dispatched for follow up testing to confirm and further investigate the practices of these companies. Of the 106 total tests, 84 separate companies were tested, the difference being as a result of 22 follow up tests.

A portion of the follow up tests were directed at Allied Home Mortgage Capital Corporation, against whom NCRC has filed a fair housing complaint. Additional complaints may also be filed, pending further investigation.

Our results documented the following disturbing patterns:

- African Americans and Latinos were discouraged 25% of the time concerning their efforts to meet with a broker, while white testers were discouraged only 12% of the time in their efforts to obtain credit.
- African Americans and Latinos were questioned about their credit over 32% of the time. White shoppers were only questioned about credit 13% of the time.
- White mortgage seekers had specific products discussed with them 91% of the time, while African Americans and Latinos had specific products discussed with them 76% of the time. Further, White testers received two rate quotes for every one quoted to African American and Latino testers.
- NCRC documented pricing discrimination in 25% of the fair lending tests, and noted that fees were discussed 62% of the time with white testers but only 35% of the time with "protected testers."
- Fixed rate loans were discussed 77% of the time with white testers but only 50% of the time with African American and Latino testers.

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These results are very troubling and document the fact, controlling for credit and individual applicant qualification factors, African Americans and Latinos are being discriminated against in the marketplace and being forced to pay a "race tax" due to unequal access to credit.

Fair Lending and Consumer Protection Regulatory Enforcement

Despite the strong evidence suggesting that the lending market is not working in an efficient or equitable manner for working class and minority populations, the state of fair lending and consumer protection regulatory infrastructure is not at the point where it can effectively combat the enormous barriers in the marketplace for traditionally underserved populations.

Current federal fair lending efforts are inadequate to protect the interests of working class and minority consumers. In September of 2005, the Federal Reserve Board stated that it referred about 200 lending institutions to their primary federal regulatory agency for further investigations based upon the Federal Reserve's identification of significant pricing disparities in HMDA data.[5] An industry publication subsequently quoted a Federal Reserve official as stating that these lenders accounted for almost 50 percent of the HMDA-reportable loans issued in 2004.[6] In September of 2006, the Federal Reserve Board referred a larger number of lenders, 270, to their primary regulatory agencies for further investigations.[7]

Unbelievably and inconceivably, not a single case of discrimination or civil rights violations have arisen from the roughly 470 Federal Reserve referrals. While the HMDA data analysis by itself cannot conclude which financial institutions were discriminating, it is beyond the point of credulity to conclude that Federal Reserve investigators could be so consistently inaccurate in their assessments about possible violations of fair lending laws. When the HMDA data was not as detailed, the Department of Justice in the 1990's settled about a dozen cases alleging discrimination with major lenders including Long Beach Mortgage and Huntington.[8] These settlements had industry-wide impacts as

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[5] Robert B. Avery, Glenn B. Canner, and Robert E. Cook, *New Information Reported under HMDA and Its Application in Fair Lending Enforcement*, Federal Reserve Bulletin, Summer 2005, http://www.federalreserve.gov/pubs/bulletin/2005/05summerbulletin.htm

[6] Inside Regulatory Strategies, November 14, 2005, p.2.

[7] Joe Adler, *Big Increase in Lenders with Suspect HMDA Data*, American Banker, September 11, 2006.

[8] There were a couple of cases in 2002 and 2004, but these cases were before the new HMDA pricing information was available. The cases involved the Department of Justice versus Decatur Federal Savings and Loan, September 1992; Shawmut Mortgage Company, December 1993; BlackPipe State Bank, December 1993; Chevy Chase, FSB, August 1994; Huntington Mortgage Company, October 1995; Security State Bank of Pecos, October 1995; Northern Trust Company, 1995; First National Bank of Gordon, April 1996; Long Beach Mortgage Company, September 1996; First National Bank of Dona Ana

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lending institutions knew that the Department of Justice was serious about enforcing the nation's civil rights laws. A resumption of these settlements by the Department of Justice would send a clear signal to the bad actors in the lending industry.

Another overlooked component of fair lending enforcement consists of fair lending reviews accompanying Community Reinvestment Act (CRA) exams and bank merger applications. Evidence of discriminatory and illegal lending can result in downgrades of CRA ratings for banks if the discrimination and illegal lending was widespread and the lender had not taken action to end the practices. Unfortunately, there is no evidence to believe that the fair lending reviews conducted concurrently with CRA exams are rigorously testing for abusive, discriminatory, and illegal lending. In most cases, even for the largest banks in the country, the fair lending section of the CRA exam reports in one to three sentences that the regulatory agency tested for evidence of illegal and discriminatory lending and that no such lending was found.[9] There is no discussion of what precisely had been done to reach this conclusion. Meanwhile, excessive high-cost lending continues to destroy the wealth of vulnerable protected class households and the communities in which they live – creating increasing challenges and problems for those consumers ever to become part of America's mainstream financial system.

Community groups and the general public would have much more assurance that fair lending reviews were rigorous if the federal agencies described what types of fair lending reviews they conducted. For example, based on risk factors identified in HMDA and CRA data screening, did the agencies probe for race or gender discrimination, did they scrutinize loans for evidence of flipping or steering? A detailed description of the types of fair lending tests conducted and the results of those tests would provide a level of public confidence in fair lending enforcement that is currently lacking. The agencies used to provide detailed descriptions in the fair lending section of CRA exams in the mid- to late-1990's.

The bank merger application process has also become woefully lax in the last few years. Large bank mergers present numerous and complex fair lending and CRA issues that are receiving cursory attention. This has occurred in a time when minority households are growing as a share of America's total population. Rather than ensuring this fast growing population has access to financial services that will enable them to build wealth and contribute to the economy, CRA and fair lending enforcement is waning.

One example of this is that the federal agencies have chosen to conduct very few public hearings on mergers in the last few years. Public hearings provide an important

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County, January 1997; Albank, August 1997; Deposit Guaranty National Bank, September 1999; Mid America Bank, FSB, 2002; Fidelity Federal Bank, FSB, July 2002; First American Bank, July 2004.

[9] For example, a federal agency had this to say on the CRA exam's fair lending review of one large bank with several affiliates, a number of whom make high cost loans: "We found no evidence of illegal discrimination or other illegal credit practices." That was the only sentence in the fair lending review section.

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opportunity for community organizations, elected officials, and bank representatives to more fully explore the range of issues in merger applications than can be possibly done through written comments alone on merger applications. Public hearings also provide opportunities for regulatory officials to ask questions of stakeholders and engage in a dialogue over the range of issues. Information collected and digested at these hearings enable all stakeholders to build in fair lending safeguards if and when the banks eventually merger.

The last major merger applications that were subject to public hearings were the Bank of America and Fleet merger and J.P. Morgan Chase and Bank One merger back in 2004. In 2006, Wachovia acquired the largest lender of exotic mortgages, World Savings, yet there was no public hearing on this merger that posed profound fair lending and safety and soundness issues. Likewise, Regions had proposed to take over Amsouth bank in 2006. Although this merger involved two of the larger banks in the South in the wake of the Katrina and Rita disaster, the Federal Reserve declined to hold a public hearing when the merger clearly had ramifications for the recovery of the Gulf States. More recently, the Federal Reserve declined to hold a hearing on the merger of Bank of New York and Mellon although the Bank of New York had received low ratings on two of the three tests on their two most recent CRA exams.[10]

The federal bank regulatory agencies are not the only agencies that have failed effectively to utilize the available tools and fair lending processes at their disposal. The Department of Housing and Urban Development (HUD) has a complaint process whereby a nonprofit organization can file a fair lending complaint alleging redlining, steering, and other actions that violate the Fair Housing Act and/or Equal Credit Opportunity Act. Unfortunately, in the fair lending complaints NCRC has filed, we have found a lack of expertise and capacity for processing the complaints among the HUD staff in the field offices.

Recent Moves by the Regulatory Agencies to Bolster their Fair Lending and Consumer Protection Enforcement – A Start but Not Enough

Cleary, NCRC advocates strongly that the federal agencies use their existing authority much more effectively. Yet, the existing authority would not be enough to keep pace with market developments as the regulatory agencies themselves have recognized. While NCRC appreciates the recent regulatory moves, they still remain inadequate by themselves to create fair and competitive markets in working class and minority communities.

Over the last year, the federal agencies have adopted guidance on non-traditional and subprime lending. Among other provisions, the guidance requires an ability to repay

[10] Bank of New York received a low satisfactory on its lending and service test from the Federal Reserve Bank of New York on both its 2005 and 2003 CRA exams. In other words, the bank was close to failing on two CRA exams in succession. Yet, no public hearing on the merger occurred.

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analysis for adjustable rate mortgages (ARMs) that is designed to eliminate the dangerous practice of assessing ability to repay on the initial low teaser rate. The subprime guidance also encourages lenders to terminate prepayment penalties 60 days before the expiration of teaser rates so that borrowers can refinance if the upward adjustment of interest rates creates unaffordable loans. Pursuing the standards in these guidance, the Federal Deposit Insurance Corporation (FDIC) and Office of Thrift Supervision (OTS) recently announced settlements with Fremont Investment and Loan and AIG, requiring these lenders to end abusive practices. While the guidance and settlements are consumer protections matters instead of explicit civil rights enforcement, they will nevertheless benefit minorities and other protected classes that have been receiving a disproportionate amount of abusive loans.

Even assuming that federal regulatory oversight was vigorous and consistent (which it is not), the federal regulatory agencies would have difficulties covering lending that originated with mortgage brokers. It is estimated that mortgage brokers process about 70 percent of the loans in the industry. While the federal agencies have advised lenders in various guidance that the must conduct due diligence regarding brokers with whom they do business, little evidence exists that the federal agencies have been able to effectively deter banks and thrifts from engaging with unscrupulous brokers.

Since federal agencies have had difficulties indirectly policing brokers, it is encouraging that the Federal Reserve Board, the Office of Thrift Supervision, and state regulatory agencies announced a pilot program on July 17 that would conduct coordinated examinations of banks, their non-depository subsidiaries, and brokers with whom they do business. Independent state-licensed lenders would also be entities examined under this program, which would scrutinize compliance with anti-discrimination laws and consumer protection statutes. Lest we get too excited about this program, we must remember that the media reports that about twelve lending institutions will be examined during the initial phase of the program. The initial and tentative nature of this program makes it clear that current fair lending and consumer protection oversight has only reached a segment of the lenders in the industry and that enormous strides need to be made in order to ensure a fair and competitive market for traditionally underserved populations.

While some federal agencies have embarked on a program to cooperate with their state counterparts, media accounts reveal that the Office of Thrift Supervision is working on proposed rules to define and prohibit unfair and deceptive practices on the part of thrift institutions. Congress has likewise applied considerable pressure on the Federal Reserve Board to prohibit unfair and deceptive practices for all lending institutions in the industry through their authority under the Homeownership and Equity Protection Act and the Federal Trace Commission Act. Federal Reserve Chairman Bernanke indicated last week that the Federal Reserve will be proposing rules regarding unfair and deceptive practices.

Steering a borrower qualified for a prime or market rate loan into a high-cost loan is one insidious practice that needs to be defined as unfair and deceptive under OTS and Federal Reserve rulemaking. FDIC Chairman Sheila Bair in testimony earlier this year suggested that many of the borrowers in ARM loans with rapidly rising rates could have qualified for lower cost fixed-rate loans.

Need for a Strong National Anti-Predatory Lending Bill

Even if the federal agencies rigorously implemented their recently adopted rules and their proposed rules (and rules rumored to be proposed soon), a strong national anti-predatory bill is essential. Simply, put the federal banking agencies cannot write rules under existing authority that will cover all parts of the lending industry. Moreover, it is unlikely the new federal-state pilot program will be expanded sufficiently to effectively police the business relationships of the thousands of brokers and state-regulated non-depository institutions with banks and thrifts. In addition, appraisers, servicers, and secondary market investors are not held accountable by federal bank regulation and are not covered sufficiently by existing federal law.

Abuses by an array of actors in the financial industry are too commonplace and new civil rights and consumer protection issues are constantly emerging. For example, since minorities and protected classes have been disproportionately targeted by predatory lenders, servicers and secondary market investors themselves risk engaging in discriminatory acts if they selectively foreclose upon minorities and protected classes. It is not clear which regulatory agency would apply the Fair Housing Act and the Equal Credit Opportunity Act to servicers and secondary market investors, suggesting a gap in existing enforcement that would allow discrimination to be practiced by other segments of the financial industry.

NCRC reiterates our position stated in previous Congressional testimony that S. 1299, the Borrowers Protection Act of 2007, represents a starting point for a comprehensive national anti-predatory bill. Rep. Ellison's bill, H.R. 3018, or the Fairness for Homeowners Act of 2007, also contains a number of strong provisions. Provisions from S. 1299 and H.R. 3081 need to be combined with the best provisions from state anti-predatory law and provisions from bills introduced in previous Congressional sessions (such as anti-predatory bills introduced by former Senator Sarbanes and Representatives Miller, Watt, and Frank) in order to produce a comprehensive bill that prevents abuse from all segments of the industry. Finally, in our recommendations below we also describe how modernizing CRA will decrease disparities in lending and improve the equity and efficiency of lending markets for traditionally underserved communities.

A comprehensive anti-predatory bill would preserve and expand the private right of action. When regulatory oversight fails, the individual must have the right to sue in a court of law. While mandatory arbitration is on its way out as an industry practice, it is time to eliminate these unfair and lopsided non-judicial procedures through a national anti-predatory law that applies to all actors in the financial industry.

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Conclusion

NCRC has asserted in this testimony that strenuous regulatory oversight and transparency is needed in order to create equitable and efficient markets that offer full product choice in minority and working class communities. HMDA data has been a powerful tool promoting transparent markets and removing a veil of secrecy that had allowed lenders to engage in blatant acts of discrimination. Yet, discriminatory practices have shifted to more subtle forms. Instead of widespread redlining and outright rejections of applicants due to their protected status, a more subtle form of discrimination involves charging higher interest rates and fees than is warranted based on creditworthiness. The new pricing data assists in uncovering discriminatory pricing, but the new pricing data by itself remains incomplete. Because HMDA data do not allow for the observation of fee gouging or dangerous risk layering involving high loan-to-value ratios and reduced documentation lending, unscrupulous lenders can continue to exploit financially vulnerable consumers. Until HMDA data includes more key underwriting variables and loan terms and conditions, the abusive parts of the industry will be one step ahead of the general public in inventing new methods for deceptive and usurious lending.

A more complete publicly available database would empower regulatory agencies and nonprofit agencies acting as private attorney generals to engage in fair lending and consumer protection enforcement. Regulatory agencies, on their part, need to be much more aggressive in using their existing tools such as fair lending reviews, discrimination settlements, CRA, and merger application reviews. They also need to augment their regulations beyond the non-traditional and subprime guidance issued this year. The pilot program involving the federal and state regulatory agencies is an infant version of the type of regulatory enforcement that is needed to adequately police the nation's mortgage brokers and their relationships with lenders.

Some have suggested that Congress create a new regulatory agency whose mission is devoted to enforcing anti-discrimination, community reinvestment, and consumer protection laws designed to create viable and healthy markets for minorities, women, the elderly and working class Americans. Congress should consider seriously this option if the rights of millions of the nation's most vulnerable families to fair treatment in the financial markets continue to be overlooked.

Specific Recommendations

Comprehensive Anti-Predatory Lending Legislation

Since NCRC's data analyses revealed a disproportionate amount of high-cost lending targeted to vulnerable borrowers and communities, Congress must respond by enacting comprehensive anti-predatory lending legislation along the lines of bills introduced by Representatives Watt, Miller, Frank, Ellison and Senator Schumer. Only a national bill can apply to the entire range of institutions in the industry from mortgage brokers,

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mortgage companies, banks, appraisers to servicers and secondary market investors including Government Sponsored Enterprises.

Senator Schumer has recently introduced S. 1299, or the Borrower's Protection Act of 2007, that would require lenders to assess a borrower's ability to pay a loan at the maximum possible rate during the first seven years of the loan. This procedure eliminates the dangerous practice of qualifying a borrower based on a low "teaser" rate in place during the first two or three years of the loan. The bill would also prohibit steering or price discrimination by making it illegal for lenders to refer borrowers to loans that are not reasonably advantageous for them, based on the loan terms for which borrowers qualify. Rep. Ellison's bill, H.R. 3081 or the Fairness for Homeowners Act of 2007, also has a number of solid provisions. In order to form the basis for a comprehensive anti-predatory law, S. 1299 and H.R. 3081 need to be augmented to include provisions from the Miller-Watt-Frank bill and the strongest state anti-predatory laws. A private right of action needs to be preserved and expanded upon by national anti-predatory law.

Enhance the Quality of HMDA Data

NCRC believes that Congress and the Federal Reserve Board (which implements the HMDA regulations) must enhance HMDA data so that regular and comprehensive studies can scrutinize fairness in lending. Specifically, are minorities, the elderly, women, and low- and moderate-income borrowers and communities able to receive loans that are fairly priced? More information in HMDA data is critical to fully explore the intersection of price, race, gender, and income.

The first area in which HMDA data must be enhanced is fee and pricing information for all loans, not just high-cost loans. In order to detect fee gouging, HMDA must contain information on the total amount of fees that must be reported on the good faith estimate and the HUD-1 form provided to the borrower one day before closing. The interest rate movements in 2005 demonstrate the confusion associated with classifying the loans that currently have price information reported. Economists as well as the general public do not know whether to call the loans with price reporting, "subprime," "high-cost," or some other name. If price was reported for all loans, the classification problems would be lessened. All stakeholders could review the number and percentages of loans in all the price spread categories. The most significant areas of pricing disparities could be identified with more precision. Moreover, loan terms such as whether the loan was fixed and/or adjustable rate (with information on the length of time in which the initial rate was in effect) is needed to more fully understand the price of the loans.

Since NCRC's previous work found significant lending disparities for neighborhoods with large concentrations of senior citizens after controlling for creditworthiness, we believe that it is important to include the age of the borrower in the HMDA data. More refined analysis can then be conducted, which would be critical for fair lending enforcement. Also, a data field indicating if the loan started with a broker, mortgage company, or depository institution would enable federal agencies and the general public

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to assess the fair lending performance of different parts of the industry with much more precision.

HMDA data must contain credit score information similar to the data used in NCRC's *Broken Credit System* report released in the winter of 2003. For each HMDA reportable loan, a financial institution must indicate whether it used a credit score system and if the system was their own or one of the widely used systems such as FICO (a new data field in HMDA could contain 3 to 5 categories with the names of widely-used systems). The HMDA data also would contain one more field indicating which quintile of risk the credit score system placed the borrower. Another option is to attach credit score information in the form of quintiles to each census tract in the nation. That way, enhanced analyses can be done on a census tract level to see if pricing disparities still remain after controlling for creditworthiness. This was the approach adopted in NCRC's *Broken Credit System* and in studies conducted by Federal Reserve economists.

HMDA data must contain information on other key underwriting variables including the loan-to-value and debt-to-income ratios. In addition, Senator Reed's bill, S. 1386, would create a database on foreclosures and delinquencies that would be linked with HMDA. This would be an important data enhancement that would help policymakers understand which loan terms and conditions (such as loan-to-value ratios and fixed or ARM) are more likely to be associated with delinquencies and foreclosures.

Fair Lending Enforcement Must be More Transparent

Above, we discuss how many referrals the Federal Reserve has made each year to the primary regulatory agencies of lending institutions exhibiting significant lending disparities based on their HMDA data. In order to make this process more transparent and thereby increase public confidence in the process, the federal agencies should annually report to Congress how many fair lending investigations they conducted, the types of fair lending investigations, and the outcomes of these investigations. This annual reporting should also include information on fair lending compliance exams conducted in conjunction with CRA exams and HUD's processing of fair lending complaints.

The pilot program announced by the federal agencies and state regulators is a start to conducting compliance reviews for all parts of bank holding companies and the brokers with whom they do business, but the pilot program is a very small start. It needs to be expanded exponentially. Congress should receive annual reports on this federal and state coordinated effort regarding fair lending and consumer compliance reviews.

Additional Support for Fair Housing Agencies

HUD's Fair Housing Assistance Program (FHAP) and the Fair Housing Initiatives Program (FHIP) provides funds for state agencies and nonprofit organizations, respectively, to engage in anti-discrimination enforcement, complaint processing,

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education and outreach activities. For Fiscal Year 2008, HUD is requesting $55 million for the programs. NCRC believes that the annual appropriation should be at least double that amount, given the significant fair lending disparities revealed by HMDA data.

Public Hearings for Mergers

Fair lending enforcement would be heightened significantly if the federal agencies regularly conduct public hearings, especially for the largest mergers in the country. Public hearings provide vital opportunities for all stakeholders to dialogue concerning fair lending and CRA issues and how to reduce lending disparities. As noted above, the federal agencies have shied away from conducting hearings in the last few years. A few years ago, the Office of Thrift Supervision had a regulatory requirement that a meeting involving the merging lenders and community groups be conducted by the agency if a member of the public requests the meeting in its comment letter. A regulatory or statutory requirement similar to the OTS procedure needs to be adopted for merger applications. When a significant number of members of the general public indicate that the merger will have significant fair lending and CRA impacts, the federal agency should hold a hearing to seriously consider and resolve these issues.

Strengthen CRA by Applying It to Minority Neighborhoods and All Geographical Areas Lenders Serve

In order to increase prime lending for minority borrowers and reduce lending disparities, CRA exams must evaluate the banks' records of lending to minority borrowers and neighborhoods as well as scrutinizing banks' performance in reaching low- and moderate-income borrowers and neighborhoods. If CRA exams covered minority neighborhoods, pricing disparities in these neighborhoods would be reduced. The Federal Reserve Board, in its review of HMDA data, found that bank lending exhibited fewer disparities in geographical areas covered by their CRA exams than in areas not covered by their exams.[12] CRA's mandate of affirmatively meeting credit needs is currently incomplete as it is now applied only to low- and moderate-income neighborhoods, not minority communities.

CRA must also be strengthened so that depository institutions undergo CRA examinations in all geographical areas in which they make a significant number of loans. Currently, CRA exams assess lending primarily in geographical areas in which banks have their branches. But the overlap between branching and lending is eroding with each

[12] Avery, Robert B., Glenn B. Canner, and Robert E. Cook, "New Information Reported under HMDA and Its Application in Fair Lending Enforcement." *Federal Reserve Bulletin*, Summer 2005. Avery, Robert B., Kenneth P. Brevoot, and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA Data," *Federal Reserve Bulletin*, September 2006.

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passing year as lending via brokers and correspondents continues to increase. NCRC strongly endorses HR 1289 or the CRA Modernization Act of 2007. HR 1289 mandates that banks undergo CRA exams in geographical areas in which their market share of loans exceeds one half of one percent in addition to areas in which their branches are located.

Short of statutory changes to CRA, NCRC believes that the regulatory agencies have the authority to extend CRA examinations and scrutiny to geographical areas beyond narrow "assessment" areas in which branches are located. Currently, the federal banking agencies will consider lending activity beyond assessment areas if the activity will enhance CRA performance. Likewise, the CRA rating must be downgraded if the lending performance in reaching low- and moderate-income borrowers is worse outside than inside the assessment areas.

CRA Must be Expanded to Non-Bank Lending Institutions

Large credit unions and independent mortgage companies do not abide by CRA requirements. NCRC and Government Accountability Office (GAO) research concludes that large credit unions lag CRA-covered banks in their lending and service to minorities and low- and moderate-income borrowers and communities.[13] Unlike their counterparts, credit unions in Massachusetts are covered by a state CRA law. NCRC has also found that CRA-covered credit unions in Massachusetts issue a higher percentage of their loans to LMI and minority borrowers and communities than credit unions not covered by CRA. Therefore, NCRC believes that applying CRA to both large credit unions and independent mortgage companies will increase their market-rate lending to LMI and minority borrowers.

[13] NCRC, *Credit Unions: True to their Mission?*, 2005, http://www.ncrc.org; and Government Accountability Office, *Credit Unions: Greater Transparency Needed on Who Credit Unions Serve and on Senior Executive Compensation Arrangements*, November, 2006

EMBARGOED UNTIL DELIVERY

STATEMENT OF

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on

ROOTING OUT DISCRIMINATION IN MORTGAGE LENDING: USING HMDA AS A TOOL FOR FAIR LENDING ENFORCEMENT

before the

OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE

of the

FINANCIAL SERVICES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

July 25, 2007
2128 Rayburn House Office Building

Chairman Watt, Congressman Miller and members of the Subcommittee, I appreciate the opportunity to testify today on behalf of the Federal Deposit Insurance Corporation (FDIC) regarding actions to enforce fair lending laws. With the pervasive use of credit in today's society, discrimination that prevents access to financial resources or raises the cost for certain individuals or groups also denies them the opportunity to participate fully in our economy and society.

Data collected under the Home Mortgage Disclosure Act (HMDA)[1] have consistently revealed that certain minorities are more likely to receive high-cost mortgages than other racial or ethnic groups. These data indicate that recent subprime lending practices are likely to have a disproportionate impact on these minorities. For example, a 2006 Federal Reserve study relying on HMDA data from 2005 found that 55 percent of African-Americans and 46 percent of Hispanics received "higher-priced" conventional home purchase loans where higher-priced refers to first-lien mortgages with interest rates that exceeded the equivalent maturity Treasury rate by 3 percentage points.[2] This compared to only 17 percent for non-Hispanic whites. The study indicated that borrower-related factors, such as income, loan amount, and gender, accounted for only one-fifth of this disparity measured relative to non-Hispanic whites.[3]

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[1] Home Mortgage Disclosure Act, 12 U.S.C. § 2801 et seq.
[2] For subordinate liens, the HMDA-reportable higher-priced loan spreads indicate loans having interest rates that exceeded equivalent maturity Treasury yields by more than five percentage points.
[3] *See* Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, "Higher-Priced Home Lending and the 2005 HMDA data," *Federal Reserve Bulletin*, September 2006, at A159.

The FDIC is strongly committed to protecting consumers and ensuring adherence to the letter and spirit of the fair lending laws, including the Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA),[4] by the banks we supervise. When the FDIC finds practices that violate fair lending laws, we take action to ensure that the illegal practices cease and that harm to consumers is remedied. To achieve these results, the FDIC has a range of supervisory and enforcement options available to address fair lending violations and to effect corrective actions at FDIC-supervised institutions.

Information collected under HMDA, including pricing data, serves as a useful tool to identify potential discrimination and to support implementation of the fair lending laws. The FDIC uses HMDA data as an integral part of its fair lending examinations. We also utilize the data to identify institutions that warrant close scrutiny because of pricing disparities for minorities or females in one or more product areas that vary significantly from the norm for FDIC-supervised institutions. Reviews of some of these institutions have suggested the possibility of discriminatory pricing on the basis of race.

Although most fair lending violations are promptly corrected at the direction of examiners, the FDIC takes progressively stronger informal and formal enforcement action to address violations depending on the severity of a bank's conduct and its willingness to take corrective action. The FDIC also makes referrals to the Department of Justice (DOJ). Further, the FDIC is currently reviewing all cases involving possible discriminatory practices that have been referred to DOJ for appropriate enforcement

[4] Equal Credit Opportunity Act, 15 U.S.C. § 1691et seq., and Fair Housing Act, 42 U.S.C. § 3605 et seq.

action. We intend to pursue these cases aggressively and to move forward in a timely manner.

My testimony will detail how the FDIC examines institutions for violations of fair lending laws. In particular, the testimony will focus on the use of HMDA data to identify institutions for more detailed examinations based on their lending performance. Finally, I will discuss the actions the FDIC takes when examinations reveal discriminatory lending activity.

Fair Lending Laws

The key fair lending laws applicable to FDIC-supervised institutions are ECOA and FHA. ECOA applies to all credit transactions, while FHA applies to housing-related credit. ECOA and FHA prohibit creditors from discriminating against any applicant in any stage of a credit transaction on the basis of race, color, religion, national origin, or sex. In addition, FHA prohibits discrimination on the basis of familial status and handicap, while ECOA includes prohibitions against discrimination based on age, marital status, public assistance income, and the exercise of rights under the Consumer Credit Protection Act.[5]

[5] ECOA also requires that a creditor take or refrain from taking certain actions regarding what information can be sought in an application process, what notices are mandated to be provided to an applicant, and when a spouse can be required to be a co-signer.

ECOA grants specific enforcement authority to ten different federal agencies, including the FDIC.[6] The FDIC is authorized to enforce the statute's anti-discrimination provisions as to the institutions we supervise with the same remedies and powers we have to enforce other laws under our jurisdiction. In addition, ECOA mandates that where an agency has reason to believe that one or more creditors has engaged in a pattern or practice of discouraging or denying applicants for credit in violation of the statute, the agency shall refer the matter to DOJ with a recommendation that an appropriate civil action be instituted.[7] The FDIC enforces FHA under its Federal Deposit Insurance Act Section 8 enforcement authority[8] and also refers violations of FHA to DOJ and the Department of Housing and Urban Development.[9]

HMDA

HMDA is a disclosure statute that facilitates enforcement of the antidiscrimination statutes. Under HMDA, mortgage lending institutions situated in metropolitan areas and with assets above an annually adjusted dollar threshold[10] are required to disclose specified data on applications for home loans and for home loans originated or purchased during each calendar year. The Federal Financial Institutions Examination Council (FFIEC) is required to summarize the data by metropolitan area and

[6] 15 U.S.C. § 1691c.
[7] 15 U.S.C. § 1691e(g).
[8] 12 U.S.C. § 1818
[9] 15 U.S.C. § 1691e(k)
[10] The HMDA reporting requirements apply to federally insured or regulated lenders or to loans which are insured by a federal agency or which the lender intends to sell to Fannie Mae or Freddie Mac. *See* 12 C.F.R. § 203.2(e)(iv). A lender must have a home or branch office in a metropolitan statistical area (MSA), originate at least one home purchase loan or refinancing loan secured by a first lien or a one-to-four family dwelling, and have total assets of more than $36 million.

lending institution, and make it available to the public.[11] It is the responsibility of the Federal Reserve Board (FRB) to write the rules, known as Regulation C,[12] to implement HMDA. The FRB also assists the FFIEC in both processing and summarizing the data each year.

HMDA Data

As previously noted, FDIC examiners use the HMDA data to review lending for potential discrimination, relying on the data to flag institutions and products for more intense scrutiny. Only about 54 percent of the banks supervised by the FDIC are HMDA data reporters. The remaining FDIC-supervised banks are not required to submit HMDA data either because their assets are below the threshold for HMDA filing or they are not located in a metropolitan area. The 2,817 FDIC-supervised institutions that reported 2004 HMDA data accounted for 31.8 percent of all institutions reporting, but only 6 percent of the loan data. In 2005, 2,822 FDIC-supervised banks reported HMDA data, accounting for 31.9 percent of reporting institutions, but only 5.2 percent of the loan data.

The HMDA Submission Process

Because of the time necessary to report and compile the data, it takes approximately eight months before the federal financial institution regulators have all the

[11] *See* 12 U.S.C. 2809.
[12] 12 C.F.R. Part 203.

HMDA data for the previous calendar year. All HMDA information for a calendar year is transmitted from the individual lender to the FRB in a report called the Loan Application Register (LAR). The LAR is due at the FRB by March 1 following the year of the reporting period. Lenders must make their LAR available to the public within thirty days of receiving a request, after removing certain information to protect the privacy of applicants and borrowers. By approximately mid-June, the FRB completes its quality and data integrity edits and provides the "raw" data to each of the federal financial institution regulatory agencies.

In addition to the edited raw HMDA data, the FRB (through the FFIEC) provides each banking agency with tables of aggregated data showing every mortgage lender, broken down by each metropolitan area in which it does business; and for every metropolitan area, aggregated data about different lenders' activity in the area and for the nation as a whole. The 2004 aggregate data was made available to the regulators in September 2005. The 2005 aggregate data was provided to the regulators in August 2006 and the 2006 aggregated data is expected to be released to the regulators in August of this year.

Review of HMDA Pricing Data for Potential Discrimination

Detailed analysis of additional information beyond the HMDA data must be conducted to determine whether disparities in the HMDA pricing data actually result from illegal discrimination. Loan pricing can be affected by many non-discriminatory factors that HMDA does not require lenders to report. Such factors may include borrower credit scores, loan-to-value ratios, debt-to-income ratios, credit and deposit history with the lending institution, and competing offers. Thus, while the HMDA pricing data is extremely useful for targeting disparities that mandate further review, the HMDA data alone cannot be used to conclude that such disparities result from discriminatory lending.

To properly use the HMDA pricing data to detect illegal discrimination, a series of careful steps are required. These steps include careful statistical analysis of the data, the identification of disparities in individual institutions and targeted reviews of the institutions' lending operations.

Initial Statistical Screening

Once the FDIC receives the HMDA pricing data from the FRB, we begin our analysis of the raw data by applying a set of statistical screens to the information. First, the FDIC assigns the HMDA-reported loans to product categories characterized by loan purpose (home purchase, refinance, and home improvement), lien-status, property type (1-4 family, multi-family, or manufactured housing), owner occupancy, and by whether the loan is a conventional loan or a loan extended under a government-sponsored loan program (such as FHA loans). Use of these categories ensures that loan products that share similar characteristics are compared as pricing is analyzed. These categories are then further refined into eight specific loan products.[13]

HMDA Outliers

After loans are classified by product type, the FDIC screens compare the loan pricing within each product type to determine if there are pricing differences between the loans to members of the prohibited basis target groups and loans to members of the control group.[14] Pricing disparities are analyzed separately for each target group and for each of the eight different types of mortgage loans, comparing the target and control groups' average rate-spread, incidence of higher price loans, and loans identified under the Home Ownership and Equity Protection Act (HOEPA). The FDIC's screens analyze pricing in loan product categories for the bank as a whole, rather than within a bank's specific branch or local market, because most FDIC-supervised banks are small, operate in fairly localized markets, and originate a relatively modest number of loans.

[13] The eight loan products are: (1) Conventional, owner-occupied, home purchase, 1st lien, 1-4 family; (2) Government-sponsored, owner-occupied, home purchase, 1st lien, 1-4 family; (3) Conventional, owner-occupied, home improvement, 1st lien, 1-4 family; (4) Conventional, owner-occupied, refinance, 1st lien, 1-4 family; (5) Government-sponsored, owner-occupied, home improvement and refinance, 1st lien, 1-4 family; (6) All 1st lien, owner-occupied, manufactured housing (conventional and government-insured; home purchase, refinance and home improvement); (7) All owner-occupied, home purchase, 2nd lien (conventional and government-insured; 1-4 family and manufactured housing); (8) All owner-occupied, home improvement and refinance, 2nd liens (conventional and government-insured; 1-4 family and manufactured housing).

[14] Target groups are specific minority groups or females, and control groups are Non-Hispanic whites or males.

The FDIC HMDA pricing screens are designed to identify disparities in the types of institutions supervised by the FDIC. The FRB also has developed screens that it applies to the raw HMDA data. The FDIC HMDA screens and the FRB HMDA screens use somewhat different statistical techniques to identify FDIC-supervised banks with pricing and underwriting disparities on loans to racial/ethnic minorities and to females that raise potential fair lending concerns. The FDIC and the FRB screens may identify different institutions. Each set of screens provides different insights into pricing disparities, which can be informative for different types of institutions.

Banks with the largest, statistically significant, pricing disparities in any one or more of the loan types for any one or more of the target groups are flagged as "outliers" for intensified review. Institutions not identified as Outliers under the FDIC screens still undergo fair lending examinations, including review of the HMDA pricing data, and loan file reviews to determine if any identified discrepancies resulted from discrimination. FDIC examiners reviewed all of the FDIC-supervised institutions identified as Outliers by the FRB screens but not by the FDIC screens and did not find any discriminatory conduct.

FDIC Response to Outliers

Once Outlier banks have been identified from the HMDA data, the FDIC begins the process of ascertaining whether the observed statistical pricing disparities are likely to be the result of discrimination, rather than legitimate non-discriminatory pricing factors.

First, each Outlier bank is asked to explain all dimensions of its credit operations for the product, including both the customer referral and application decision-making processes. As part of this, the bank is required to provide details on its pricing of the loan product(s) at issue, including available rate sheets, and a description of the degree of discretion allowed to loan officers. Also, the bank is asked to provide HMDA data for the year-to-date (that is, the data not yet filed with the FRB) so that the additional data can be analyzed to determine if the pattern of disparity continues.

If the Outlier bank's responses and subsequent examiner verification do not resolve the pricing disparity issues, specially trained FDIC fair lending examiners use the bank's answers to focus a fair lending review for the bank. For the FDIC's review of 2005 Outliers, if an examination was not already scheduled in the first two quarters of 2006, it was accelerated or a special fair lending review was scheduled.

The fair lending review focuses on the loan product(s) and target group(s) that the screening process identified as having pricing disparities. The examiners conduct in-depth interviews of bank management and key loan officers to identify the specific criteria the bank used to price loans, and review individual loan files and document the criteria information for each one. Common criteria include debt-to-income or loan-to-value ratios, and credit scores.

After the file review is complete, FDIC economists and statisticians conduct a detailed statistical analysis of the criteria information from the files. The analysis seeks to verify whether or how much of the loan pricing disparity is explained by the pricing criteria the Outlier bank asserts it utilizes. If, after accounting for the bank's pricing criteria, there remains an unexplained, statistically significant[15] disparity between prices charged to target and control group borrowers, then an inference can be drawn that the disparities resulted from pricing discrimination.

As with any fair lending examination where apparent illegal discrimination is detected, the FDIC notifies the Outlier bank when the statistical analysis finds evidence of discrimination. The bank may then provide additional information to refute that finding. If the FDIC finds that the bank's information does not convincingly refute the preliminary finding of discrimination, we finalize the examination and refer the case to DOJ.[16] DOJ may then conduct its own investigation and go forward with a case, or it may defer to the FDIC's supervisory and enforcement process.

Disposition of 2004 and 2005 HMDA Data Outliers

The FDIC's screening of the 2004 HMDA data identified 47 FDIC-supervised Outlier banks, while FRB screening identified 16. Nine of the 47 FDIC-identified Outlier banks were part of the 16 Outlier banks identified by the FRB screens. In screening the 2005 HMDA pricing data, the FDIC found that a number of banks exhibiting pricing

[15] Statistically significant is defined as a significance level of at least 5 percent. Statistical significance is the probability that an observed disparity would occur if there was no underlying systematic difference in treatment (that is, differences were truly random). Statistical significance levels of at least 5 percent are considered, by economists and statisticians, to be a strong indicator that the observed disparity is not likely to be due to random chance. A statistical significance level of 5 percent is also accepted by many courts as sufficient to rule out chance. *See Waisome v. Port Auth.*, 948 F.2d 1370, 1376 (2d Cir. 1991).
[16] By its nature, a finding of discrimination based on statistical analysis of a bank's loan data is a pattern or practice that must be referred under ECOA.

disparities had already been identified as Outliers using the 2004 HMDA data and so were already being reviewed. The FDIC identified an additional 16 FDIC-supervised Outlier banks, while the FRB identified a total of eight additional banks, three of which were included in the 16 banks identified by the FDIC. For both 2004 and 2005, the FDIC screens did not flag the other FRB-identified Outlier banks because there were too few loans from which to draw statistical inferences, disparities were not statistically significant under the FDIC screens or because the identified disparities, using the FDIC screens, were smaller relative to the pricing disparities for other FDIC-supervised banks.

With regard to the 47 institutions the FDIC identified as Outlier banks based on the 2004 HMDA pricing data, the following actions were taken:

- Two banks were referred to DOJ following completion of the review process described above. In one instance, the outlier screening process identified disparities in the average rate spread on higher-priced loans and in the incidence of HOEPA loans for African-American borrowers compared to non-Hispanic white borrowers for manufactured housing loans. In the other case, the screening process identified disparities in the average rate spread on higher-priced conventional residential refinance loans for African-American borrowers compared to non-Hispanic whites.

- Nine reviews were closed following the pricing criteria interviews conducted with bank management, a full file review, and a statistical analysis, controlling for each specific pricing variable. The statistical analyses for eight banks revealed that the disparity was explained by the banks' objective credit-quality criteria and there was no statistically significant disparity due to race, ethnicity, or gender. At the ninth bank, the statistical analysis of the data gathered by the examiners found that the disparity could not be explained. After notice of the FDIC's findings, the bank provided additional information about its loan pricing. The information reduced the statistical significance of the previous findings below that necessary to support a finding of discrimination and the matter was closed.

- At eight of the banks, the FDIC determined there was no discretion in loan pricing, and factors used to set prices were non-discriminatory. Examiners verified this through a sample loan file review during the on-site fair lending review.

- Five of the 2004 Outlier banks were no longer supervised by the FDIC and fair lending reviews were therefore the responsibility of the current federal supervisory agency.

- During the HMDA data validation process, examiners determined that the disparities for three of the 2004 HMDA Outliers resulted from the banks' filing of incorrect HMDA data. After the data was corrected, the disparities disappeared.

- For the remaining 17 Outlier banks, additional information supplied by the institution or gathered by examiners during on-site reviews, and verified by statistical analysis when required, resulted in a finding that the pricing disparity was no longer statistically significant.

- Three 2004 Outliers remain under review.

Of the additional 16 pricing Outliers identified by the FDIC screens from the 2005 HMDA data, the following actions have been taken:

- The FDIC initiated fair lending reviews of all 16 Outliers during the first two quarters of 2007.

- One of the 2005 Outliers was no longer regulated by the FDIC, and the fair lending review was therefore the responsibility of the current federal supervisory agency.

- One 2005 Outlier demonstrated that a valid special purpose credit program caused the disparity.

- Three Outlier reviews were resolved after the statistical analysis showed that the pricing disparity was caused by the application of non-discriminatory pricing criteria, such as the amount of the loan, credit score, debt-to-income ratio, the cost of private mortgage insurance, or loan-to-value requirements.

- One institution allowed no discretion in pricing the loans at issue, and the factors used to set prices were non-discriminatory. The FDIC verified this through a sample loan file review during the on-site fair lending review.

- Additional information supplied by two institutions and verified by statistical analysis resulted in a determination that the pricing disparity was no longer statistically significant.
- The FDIC is continuing to review the eight remaining Outlier institutions.

In addition to the two referrals to date resulting from the HMDA Outlier review, the FDIC made a referral to DOJ of a bank where examiners reviewed the HMDA data in the course of a regularly scheduled compliance examination. The examiners initially found that African-American borrowers were more likely than non-Hispanic whites to have reportable higher-priced home purchase or refinance loans. The examiners also found that loan officers were compensated in large measure by "overages" on the loans they made. While the bank tracked the overages for compensation purposes, the bank did not monitor to determine whether the discretionary pricing resulted in disparate treatment.

Fair Lending Examinations

FDIC examiners conduct a fair lending exam in conjunction with each scheduled compliance examination. In conducting the fair lending exams, examiners follow the Interagency Fair Lending Examination Procedures.[17] All compliance examiners also receive in-depth, specialized training in how to conduct fair lending examinations.

Examiners first target their analysis based on a review of the bank's lending operations and judgment about the areas most at risk for potential discrimination.

[17] Incorporated in the FDIC Compliance Examination Handbook, http://www.fdic.gov/regulations/compliance/handbook/html/chapt04.html.

Examiners next analyze the bank's reasons for approving and denying loans, including conducting interviews to determine the bank's underwriting criteria – both as written and as actually implemented. As necessary, examiners also perform file reviews to collect loan and application data. If a file comparison shows apparent differences in treatment, the examiner conducts additional interviews, and attempts to verify the bank's explanation for the findings.

Review of HMDA data is an important component of fair lending examinations, and provides examiners with valuable information about a bank's home mortgage operations. Even if a bank is not required under the terms of HMDA to be a HMDA data reporter, all banks are required under ECOA to retain the information mandated under HMDA (including race, sex, and ethnicity), as well as information on the applicant's marital status and age.[18] This requirement is particularly significant for the FDIC because it regulates many small banks that are not subject to HMDA. The ECOA data is available to examiners who retrieve the information from loan files during the fair lending review.

For banks that report HMDA data, FDIC examiners review any HMDA pricing data as a part of each fair lending exam, in addition to considering application approval information. As described above, the FDIC uses HMDA pricing data to identify institutions that warrant close scrutiny because of larger pricing disparities for minorities or females in one or more product areas than is evident for other FDIC-supervised institutions. Examinations of these Outlier institutions have suggested the possibility of

[18] *See* 12 C.F.R. §§ 202.12 and 202.13(a).

discriminatory pricing in a few institutions on the basis of race, especially in some cases where loan officers enjoyed broad unmonitored pricing discretion. In these cases, the FDIC takes all appropriate enforcement action as described below, and makes referrals to DOJ.

Finally, the FDIC reviews all consumer complaints of discrimination to determine the facts regarding the matter. A complaint may trigger an on-site investigation, including interviewing the person alleging the discrimination, to verify the actions of the financial institution and to conduct a comparative loan file analysis of similarly situated credit applicants.

When examiners preliminarily identify fair lending violations, they consult with an FDIC fair lending specialist and legal staff. If FDIC regional staff concurs with the finding of a violation, a formal letter is sent to the bank apprising its management of the finding and offering the bank an opportunity to respond. In the event the institution's response does not provide credible nondiscriminatory reasons that refute the finding of discrimination, the FDIC cites the violation in the examination report and begins further corrective action. If the fair lending violation appears to involve a pattern or practice, a referral is made to DOJ.

If the fair lending violation does not constitute a pattern or practice that must be referred to DOJ, the FDIC will require any necessary corrective action as an immediate follow-up to the examination. Most often, the bank takes immediate corrective action, with FDIC follow-up and verification. For example, the supervisory response to isolated, technical violations of ECOA that do not involve discrimination might well consist of explaining the violations to bank management and working informally with the bank to ensure correction. In other cases, the FDIC may seek prospective corrective relief from the bank such as requiring a bank to change any policies and procedures that contributed to the discrimination, to further train bank employees, to establish community outreach programs, to change marketing strategy or loan products to better serve all sectors of the community being served, and/or to improve oversight and compliance systems.

If a violation involved harm to individual consumers, the FDIC also will seek retrospective relief. This includes requiring the bank to identify customers who may have been subject to discrimination and offering them credit if they were improperly denied. In addition, we may require restitution by the bank to its customers for out-of pocket expenses incurred as a result of the violation (including the payment of fees or expenses in connection with an application) and require the bank to pay customers the difference between any greater fee or expense of another loan granted elsewhere after the improper denial. If loans were granted on disparate terms, we require the bank to modify those terms and refund any excess amounts paid by customers.

As indicated, when a violation detected during the examination appears to be a pattern or practice, and the bank does not convincingly refute the finding, the matter is fully reviewed by FDIC supervisory and legal staff and referred to DOJ. If DOJ does not take action and refers the case back to the FDIC, the FDIC uses its supervisory authority to ensure the bank takes appropriate corrective action and implements any appropriate additional remedies.

Enforcement Actions

In addition to the corrective action described above, the FDIC enforces consumer and fair lending laws through administrative enforcement actions and appropriate referrals to law enforcement. In addressing fair lending violations, the FDIC has the same range of enforcement options available as it has in addressing any statutory violations under its jurisdiction.

Widespread or serious violations merit stronger informal or formal enforcement action. An informal enforcement action includes the use of a Memorandum of Understanding or a Board Resolution to document the problem and the bank's commitment to fix it. Formal enforcement actions, such as civil money penalties and cease-and-desist orders, which may include restitution, are generally pursued for repeat and very significant violations.

Since 2004, the FDIC has cited 170 banks for substantive violations of ECOA or FHA. These violations have included discrimination on the basis of race, ethnicity, gender, religion, marital status, and other prohibited bases. With regard to marital status, the FDIC has identified a significant number of instances where institutions require an applicant's spouse to sign a loan or guaranty in contravention of fair lending laws.

Corrective action was obtained in all instances of discrimination. In addition, the FDIC issued one cease and desist order at a bank with substantive discrimination violations. The FDIC also took informal enforcement actions, including accepting 34 Board Resolutions and 18 Memoranda of Understanding at banks with substantive discrimination violations.

In addition to these substantive violations, since 2004, the FDIC has identified 2,225 non-substantive violations of ECOA and FHA, as well as 1,354 violations of HMDA reporting requirements. These violations reflected deficiencies in banks' compliance management systems, including issues related to the more technical aspects of the fair lending laws and HMDA. These violations were corrected at the FDIC's direction as part of the examination process. In the case of repeated or egregious HMDA reporting violations, the FDIC imposed civil money penalties in 40 cases, totaling $230,750.

Referral to DOJ

When the FDIC finds reason to believe a bank has engaged in a pattern or practice of discriminatory lending subject to ECOA, such conduct is required by statute to be referred to DOJ with a recommendation that an appropriate civil action be instituted. The FDIC also refers violations of FHA to DOJ. The FDIC is currently reviewing all cases involving possible discriminatory practices that have been referred to DOJ, including those cases identified as Outliers through the HMDA screening process, for appropriate enforcement action that we can take. We intend to pursue these cases aggressively and to move forward in a timely manner.

Following a referral, DOJ conducts its own independent investigation, which may be broader in scope than the investigation conducted by the FDIC. The FDIC's evidentiary threshold for referral is lower than the evidentiary standard for DOJ to proceed with an action. The "reason to believe" standard required for an FDIC referral does not require that the FDIC have sufficient evidence to prove a violation with certainty. Instead, a "regulatory agency has reason to believe that an ECOA violation has occurred when a reasonable person would conclude from an examination of all credible information available that discrimination has occurred."[19]

The statutory remedies available to DOJ exceed those available to the FDIC. While the FDIC can order the bank to cease and desist from a discriminatory practice and order the bank to pay restitution to those injured by the discrimination, DOJ can seek these same remedies and, in addition, can seek punitive damages.[20] Pursuant to the statutory scheme established for the enforcement of ECOA, once a case has been referred to DOJ, it has jurisdiction to address the violation. In the Policy Statement on Discrimination in Lending, [21] the FDIC and other federal regulators agreed that when a

[19] *See* Policy Statement on Discrimination in Lending, April 15, 1994, 59 FR 18266-01 at 18271 (The Policy Statement was adopted by ten federal regulators, including the FDIC and DOJ).
[20] 15 U.S.C. §1691e(h).
[21] *See* footnote 20.

referral has been made, the "agencies will coordinate their enforcement actions and make every effort to eliminate unnecessarily duplicative actions."

Since 2004, the FDIC has referred to DOJ 115 findings of illegal discrimination under ECOA. DOJ immediately deferred to the FDIC's administrative handling of the matter in 103 of the cases during that time frame.[22] In those cases, the bank was required by the FDIC to remedy the harm experienced by affected consumers, to advise the consumers of their right to pursue legal action, and ordered to stop engaging in illegal discrimination. Three of the referrals to DOJ resulted from findings based on the 2004 and 2005 HMDA pricing data.

Conclusion

The FDIC takes seriously our responsibility to protect consumers and enforce the fair lending laws. When the FDIC identifies discriminatory practices, we require corrective action, including financial restitution to parties harmed by the conduct, and makes referrals to the DOJ in appropriate cases. The FDIC is continually assessing our supervisory practices for identifying fair lending violations and how to maximize the value of the HMDA data to ensure effective examinations and enforcement.

Thank you for the opportunity to testify. I look forward to answering any questions.

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[22] The examination date where a discrimination violation is cited, the referral to DOJ, and any subsequent referral back to the FDIC for administrative handling may not occur in the same calendar year.

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Statement of

Montrice Godard Yakimov
Managing Director for Compliance and Consumer Protection
Office of Thrift Supervision

concerning

**Rooting Out Discrimination in Mortgage Lending:
Using HMDA as a Tool for Fair Lending Enforcement**

before the

Subcommittee on Oversight and Investigations of the
Committee on Financial Services
United States House of Representatives

July 25, 2007

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Department of the Treasury

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Montrice Godard Yakimov
Managing Director for Compliance and Supervision
Office of Thrift Supervision

I. Introduction

Good afternoon, Chairman Watt, Ranking Member Miller, and Members of the Subcommittee. Thank you for the opportunity to present information regarding the activities of the Office of Thrift Supervision (OTS) on issues related to the Home Mortgage Disclosure Act (HMDA) and fair lending enforcement. Consumer protection, maintaining the safety and soundness of the thrift industry, and ensuring the continued availability of affordable housing credit are the three primary responsibilities of the OTS.

In my testimony today, I will describe the OTS's fair lending oversight program, including the resources we devote to this critical function; our use of HMDA data to conduct fair lending assessments and to enforce fair lending laws; and an overview of our fair lending priorities going forward. I will also address the various questions raised in the Chairman's invitation letter and attempt to provide you with the sense of purpose and priority with which OTS Director Reich has charged our Compliance and Consumer Protection Division proactively to address fair lending and related issues.

II. The OTS Fair Lending Program and Agency Resource Commitments

Among Director Reich's top priorities the past two years has been overhauling, upgrading and strengthening the resources in the OTS's Compliance and Consumer Protection Division. During the past year, the OTS re-established a centralized direction at our Washington headquarters for our compliance function, including fair lending oversight and enforcement. At the direction of Director Reich, the agency created new managerial positions and filled key vacancies within our Compliance and Consumer Protection Division. I was one of the senior managers hired in this effort. We also hired a Director of Consumer Regulations, primarily responsible for developing guidance for examiners and the industry regarding consumer compliance regulations, and an agency Fair Lending Specialist, who is primarily responsible for coordinating our national fair lending examination program.

In 2006, we hired 80 new examiners and we are in the process of hiring approximately 40 more this year. We are continuing to enhance our training and professional development programs, and we recently created five new positions for experienced Compliance Examination Specialists – one for each of our regional offices.

OTS examiners conduct comprehensive examinations every 12-18 months (depending on the asset size of the institution) that consist of an assessment of risk management and compliance risk. OTS examiners are cross trained in both disciplines. As of June 30, 2007, the OTS had approximately 556 examiners, specialists and managers. In addition, the OTS currently has a team of 65 examiners and supervisors with advanced knowledge and expertise in fair lending compliance.

These specialists are based in each of our five regional offices and we call upon them to analyze HMDA data and provide direction on the areas in which examiners should focus during each particular exam. These specialists also participate in fair lending exams and assist our other examiners in conducting fair lending assessments, particularly for institutions that present potential heightened levels of fair lending risk. OTS fair lending specialists supplement the talent and expertise of our examiners.

During the past year, the OTS expanded and refined its resources in the consumer protection area, and we will continue to supplement our number of fair lending specialists with additional hiring in this area.

A longstanding component of the OTS's fair lending oversight program is an examination process that begins at the point at which an institution first files for a charter from the OTS. During the application process, the most recent reports of examination by an applicant's federal regulator are reviewed for violations of fair lending regulations and/or weaknesses in the institution's compliance program. If problems or weaknesses are identified, an applicant must provide the OTS with sufficient evidence of corrective action before the agency will act affirmatively on the application. An applicant's inability to demonstrate that it has an effective compliance program will generally result in an unfavorable finding with respect to its managerial resources and a denial of the application.

Most types of OTS applications are also subject, pursuant to our regulations, to publication requirements that provide an opportunity for public comment on an applicant's fair lending activities and practices. Comments received by the OTS are considered during the application review process. Applicants with a less than satisfactory compliance rating also do not qualify for expedited treatment of their applications and, instead, must satisfy standard application filing requirements.

The OTS also educates and trains thrift institutions regarding new or emerging fair lending issues and trends. In our experience, communication and training facilitates strong overall compliance risk management systems and controls within the industry that we regulate. This is consistent with the fundamental goal of our fair lending and overall compliance and consumer protection program to address potential problems before they arise.

III. Overview of Fair Lending Laws and OTS Oversight and Enforcement

OTS examiners utilize comprehensive interagency fair lending examination procedures to assess compliance with the Equal Credit Opportunity Act (ECOA), as implemented by Regulation B and the Fair Housing Act (FHA). ECOA prohibits discrimination based on race or color, religion, national origin, marital status, age, an applicant's receipt of income derived from public assistance, and an applicant's exercise of any right under the Consumer Credit Protection Act.

The FHA, implemented through the Department of Housing and Urban Development (HUD) regulations, prohibits discrimination based on race or color, national origin, religion, sex, familial status, or handicap. The FHA prohibits discrimination in transactions involving residential real estate including making a loan to buy, build, repair or improve a dwelling; purchasing real estate loans; selling, brokering or appraising residential real estate; or selling or renting a dwelling.

The existing examination process based on the interagency procedures enables us to identify and monitor potential or existing risks relating to fair lending compliance. In between the regularly scheduled exams that occur every 12 to 18 months, we engage in off-site monitoring that includes following-up on any issues raised during previous examinations and monitoring for changes in products, management, or services.

Pursuant to our examination procedures, OTS examiners evaluate whether savings associations discriminate against any group or groups covered by the fair lending laws in or by:

- failing to provide information or services – or providing different information or services regarding any aspect of the lending process. This includes communications about credit availability, application procedures, or lending standards;
- discouraging or selectively encouraging applicants with respect to inquiries about or applications for credit;
- refusing to extend credit or using different standards in determining whether to extend credit;
- varying the terms of credit offered including the amount, interest rate, duration, or loan type; or
- using different standards to evaluate collateral and related factors.

A. OTS's Fair Lending Oversight Program

Fair lending reviews are an integral part of OTS supervision to determine compliance with consumer protection laws and regulations. OTS examiners conduct a fair lending assessment during each comprehensive examination. In addition, examiners may conduct targeted fair lending reviews whenever circumstances warrant. The OTS examines institutions for compliance with fair lending laws regardless of whether the institution is required to report mortgage loan data under the HMDA. OTS examination procedures require our examiners to examine savings associations for various indications of discrimination, including potential discriminatory treatment in pricing. Although the current pricing analysis is primarily focused on higher-priced loans, examiners look for unlawful pricing discrimination at any pricing level.

In addition to HMDA data, OTS examiners incorporate other information in their investigations, such as consumer complaints, the likely risks of an institution's different business lines, and the adequacy of the institution's compliance-risk management system. To gauge the risk of price discrimination, examiners consider, among other types of information, the presence of broad employee or broker discretion in pricing and the relationship, if any, between pricing and the compensation or other incentives of loan officers or brokers. When examiners determine that a fair lending examination should focus on pricing, they collect additional information from the institution to evaluate whether pricing disparities can be fully attributed to legitimate factors identified by the institution or whether they may be due, even in part, to unlawful discrimination.

OTS examiners also seek to detect other forms of discrimination, such as underwriting discrimination (denying credit on the basis of the applicant's race), marketing discrimination (advertising only in media serving nonminority areas or market),or redlining (denying credit on the basis of the racial characteristics of an applicant's neighborhood).

If unlawful discrimination is found, the institution is referred to the Department of Justice or HUD, in accordance with federal fair lending laws. Depending on the outcome of the referral and the nature of the violation, the OTS may take other action to resolve the matter fully. For example, the OTS may direct an institution to provide remedies to harmed parties and improve its fair lending compliance controls and policies.

B. OTS Use of HMDA Data for Fair Lending Assessments

Home loan data collected, reported, and publicly disclosed by OTS-regulated institutions under the HMDA plays a significant role in the OTS fair lending review of our institutions. Our HMDA review of individual institutions involves a multi-step process that I will describe more fully in the discussion below on what the 2004 and 2005 HMDA data revealed about patterns of mortgage lending to minority borrowers.

The HMDA requires all home lenders that are subject to its provisions annually to disclose specific data about mortgage transactions including applications received and loans originated, withdrawn or denied. This information is publicly available and can be used to aid in fair lending reviews and enforcement of lender programs.

The HMDA's goal is disclosure, not prohibition or restriction. The act does not require that any loan be made or refused. Instead, HMDA prescribes lender disclosures that make up a data set about lending activities. In 2006, OTS regulated institutions reported approximately 4 million loan applications. The information disclosed about each application includes the race, ethnicity, and income of the applicant, the type and amount of the loan applied for, whether the loan was originated or the application was denied, and the census tract of the financed property.

OTS examiners use an institution's HMDA data, including denial data for loan applications and pricing data for loan originations, along with other information about an institution to determine our supervisory focus during the institution's fair lending examination. In some instances, the HMDA data are incorporated into statistical management systems to help determine whether race or national origin was a factor in credit decisions. Beginning with the 2004 HMDA data, these analyses incorporated additional loan-price data to provide information on annual percentage rate (APR) spreads on particular loans and lien status, among other items.

The effective use of HMDA data depends on a full understanding of the inherent limitations of those data. The HMDA data includes valuable information, but it does not include all of the factors that lenders routinely consider in loan underwriting and pricing. Some of the typical credit risk factors not included in the HMDA data are credit scores and loan-to-value ratios, among many other lawful items that are factored into a final loan decision. However, HMDA involves a limited data collection that does not include the collection of such extra information. Thus, we cannot conclude from HMDA data alone that an observed racial or ethnic difference in loan pricing at an institution is the result of unlawful discrimination. This is the reason that OTS examiners consider additional information about a lender's underwriting and approval practices before coming to a conclusion about a lender's fair lending compliance record.

In order to more effectively target its examination resources, the OTS identifies "outlier" institutions that warrant special scrutiny because of larger pricing disparities for particular groups in one or more loan product areas than are evident for other OTS - supervised institutions. Institutions identified as outliers are asked to identify the mechanism through which borrowers obtain mortgage loans and the underwriting procedures and factors the institution considers in making pricing decisions for the loan product under review. As necessary, further analysis is used to determine the proper use of the pricing factors identified by an institution.

As described in the OTS's response to the Subcommittee's July 2, 2007, inquiry, the agency reviewed HMDA data for 2004 to 2006 for many institutions, including those identified as having statistically significant disparities in one or more mortgage product groups. In order to determine whether any fair lending issues were present, the OTS: (1) discussed the initial analysis with institution management staff and asked them to respond to us concerning their evaluation of the data; (2) requested and reviewed institution internal assessments as well as third party assessments of institutions' compliance with fair lending laws and regulations; and (3) requested and received additional data considered by the institutions to make their underwriting and pricing decisions.

In conducting our HMDA-based review of an institution, the specific factors we evaluate include, but are not limited to, loan-to-value ratios, credit scores, debt-to-income ratios, and APR analyses. We conduct our HMDA analysis on a nationwide basis, utilizing analytical tools and the additional data fields described here to evaluate institutions' HMDA data in connection with our overall assessment of institutions' fair lending activities and compliance.

We also strive to update and improve our review, as appropriate, in connection with our utilization of the HMDA data. For example, in connection with our HMDA follow-up evaluations the last two years, we built upon an evaluation framework previously developed in this area. OTS staff submitted data requests to institutions identified as having the potential for disparities in pricing or loan decisions. OTS staff then met in Washington to receive advanced training in analytical tools and to coordinate a nationwide strategy for our industry analysis. Each region investigated its institutions and performed on-site visits to conduct comparative file reviews. In some instances, we requested additional data from institutions to ensure comprehensive assessment of their fair lending program.

Our analysis of HMDA data from 2004 and 2005 led to targeted, additional, on-site examinations of approximately 25 institutions in 2005 and 2006. Our analysis of the 2006 HMDA data is ongoing, including on-site reviews and follow-up with particular institutions. On-site reviews based on the 2004-2005 HMDA data supplemented regularly scheduled fair lending reviews to determine the possibility of discriminatory pricing or application denial rates because of race or other factors. The OTS has completed assessment of the institutions based on the 2004 HMDA data and most of the institutions screened as having potential pricing disparities based on the 2005 HMDA data; however, several reviews based on the 2005 data are still ongoing.

Our analysis of the 2004 HMDA data did not reveal any fair lending violations representing a "pattern or practice" requiring a referral to the Department of Justice. However, our analysis did reveal areas where institutions need to address potential weaknesses that, if left unchecked, could result in future violations. The actions that we advised institutions to take to address potential problems included the following:

- Adding specific questions to a Quality Assurance pricing checklist to determine if the underwriter properly priced the loans;
- Conducting extended, targeted fair lending training;
- Enhancing fair lending analysis as part of normal business operations;
- Enhancing a monitoring program for brokers and correspondents;
- Augmenting an internal fair lending review process with review techniques suggested in the Interagency Fair Lending Examination Procedures;
- Implementing more detailed underwriting standards to ensure that exceptions and compensating factors are applied consistently to all applicants; and
- Monitoring application disparities on a monthly basis and ensuring that loan officers are notified of disparities on a regular basis.

In all cases, OTS examiners work with institutions to assist in their fair lending training, monitoring and/or tracking of mortgage brokers and loan personnel in order to strengthen institutions' fair lending compliance programs.

OTS examiners have also conducted exhaustive analysis of most of the 2005 HMDA data as described previously, and analysis of the 2006 data is in progress. As this work continues and our analyses are finalized on the remaining 2005 data and the 2006 HMDA data, we will take all appropriate actions, including referrals to the Department of Justice, wherever our examination findings reveal referable violations of the fair lending laws.

C OTS Use of Consumer Complaint Information

Effective fair lending enforcement also requires a robust consumer complaint mechanism to address issues as they arise. This involves timely and effective handling of fair lending issues with the regulated entity that is the subject of a complaint. It also requires using information collected in the complaint process to improve consumer protection monitoring, oversight and enforcement of regulated institutions and the industry. In addition to monitoring consumer complaint activity at individual institutions to address potential issues during on-site examinations, OTS consumer complaint staff assists in identifying trends that may suggest the need for industry guidance.

The OTS continually tracks, investigates and responds to consumer complaints involving thrift institutions with respect to loan and deposit product offerings and services. Consumer complaint staff and managers prepare summaries of consumer complaints for the use of OTS examiners during on-site examinations. For example, institution consumer complaint records are an integral part of the OTS individualized Pre-Examination Response Kits (PERK), our request for data to be used during the exam. This data plays a significant role in identifying areas for examiner focus during on-site examinations. These records also play a critical role in assessing the adequacy of an institution's overall compliance management program and in pursuing corrective action that may be appropriate to address programmatic weaknesses or deficiencies.

D. OTS Training Activities and Programs

Another aspect of the OTS fair lending program involves comprehensive and effective training and continuing education of examiners, including supervisory and compliance staff regarding fair lending issues. As previously highlighted, the agency also educates and trains institutions and the industry regarding new or emerging fair lending issues and trends.

E. Recent OTS Fair Lending Enforcement Actions

Regarding formal fair lending enforcement actions, the OTS has undertaken ten enforcement actions involving ECOA issues, and nine actions involving HMDA issues since January 1, 2004. These cases have resulted in three Cease and Desist Orders and Civil Money Penalties totaling $117,500, as well as other institutional changes sought by the OTS.[1]

The OTS is committed to active and ongoing fair lending supervision of the institutions we regulate. We will undertake enforcement actions, when and as appropriate, to address fair lending deficiencies among our supervised institutions. We will also continue strive to ensure that borrowers at OTS-regulated thrifts enjoy a lending environment free from unlawful discrimination.

IV. Interagency Pilot Project to Expand Fair Lending Reviews at Depository Institution Holding Company Subsidiaries and Affiliates

The OTS continues to expand the tools and supervisory approaches we utilize in our fair lending compliance and oversight of the thrift industry. One example of our efforts in this area is a pilot project we recently announced involving both depository institution holding company regulators, the OTS and Federal Reserve Board (FRB), as well as the Federal Trade Commission (FTC) and several state banking departments, as facilitated by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). This effort complements our existing oversight programs by enabling targeted consumer protection compliance

1. Among the institutions receiving cease and desist orders in conjunction with a finding under ECOA, one institution was cited for not using its rate sheets and not having written guidelines to govern the assignment of interest rates to its residential customers. In addition, no documentation for pricing decisions was found in the loan files of that institution, and a significant number of HMDA reporting errors were identified. Another institution was cited for an ECOA violation for not advising applicants of their right to receive a copy of the appraisal report used in conjunction with applications for secured credit, and for the erroneous collection of monitoring information.

reviews of selected non-depository lenders with significant subprime mortgage operations.

This collaborative state/federal pilot project is scheduled to begin in the fourth quarter of this year and will focus on non-depository subsidiaries of bank and thrift holding companies, as well as mortgage brokers doing business with, or working for, these entities. In addition, the states will conduct coordinated examinations of independent state-licensed subprime lenders and their associated mortgage brokers. The agencies will investigate a sample of entities subject to their oversight and review. The agencies will share information about their reviews and investigations, collaborate on the lessons learned, and seek ways to improve cooperation in ensuring effective and consistent reviews of these institutions.

By joining together in applying a coordinated review program, the agencies will be better positioned to evaluate and more consistently assess subprime mortgage lending practices across a broad range of mortgage lenders and other participants within the industry.

In connection with the pilot project, the agencies will evaluate companies' underwriting standards, as well as senior management oversight of the risk management practices used for ensuring compliance with state and federal consumer protection regulations and laws, including HMDA, ECOA, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act (FTC Act), and the Home Ownership and Equity Protection Act. The agencies will also initiate appropriate corrective or enforcement action, as warranted by the findings of the reviews or investigations.

At the conclusion of the reviews, the agencies will analyze the results of the pilot project and determine whether the project will be continued. If so, the agencies will determine the focus of future reviews at that time.

V. OTS Proposed Rulemaking on Unfair or Deceptive Acts or Practices

Another critical aspect of the OTS's compliance program is ensuring that our authority is clear and unambiguous; that the entities that we regulate understand the laws under which we expect them to operate; and that we consistently apply these standards to all segments of the industry we regulate.

Consistent with our commitment to ensuring that our institutions understand what is expected of them with regard to compliance with federal consumer protection statutes and rules, the OTS is developing an advanced notice of proposed rulemaking (ANPR) that will seek comment on various issues involving unfair or deceptive acts and practices (UDAPs). Our goal in pursuing an ANPR is to solicit public comment on whether the

OTS should expand its current prohibitions against UDAPs and provide greater clarity regarding how we will make UDAP determinations going forward.

Pursuant to the ANPR, we hope to solicit comment on our authority to promulgate rules under the FTC Act and the Home Owners' Loan Act; identify existing OTS rules on UDAPs; solicit input on various approaches the OTS should consider in a UDAP rule, including existing guidance the FTC has adopted, approaches taken by various states through anti-predatory lending laws, and various models other federal agencies taken to define and prohibit unfair or abusive lending practices. We expect that the ANPR will also solicit comment on the principles the OTS should consider in determining whether a product or practice is unfair or deceptive and whether the agency should consider various practices unfair or deceptive.

Finally, we recognize that the financial services industry and consumers benefit from consistent rules and guidance in the oversight of similar areas and activities. The federal banking agencies (FBAs) have adopted uniform or similar rules in many areas, and we hope to solicit comment in the ANPR regarding the application of consistent interagency UDAP standards among the FBAs. We anticipate a 90 comment period and expect the ANPR to appear in the Federal Register during the coming weeks. We look forward to receiving public comments from consumer advocates, the financial services industry and other members of the public.

VI. Conclusion

The OTS is committed to effective fair lending supervision and enforcement on an industry-wide basis. Consumers clearly benefit from transparency and industry-wide compliance with fair lending and other consumer protection laws. We are committed to ensuring that the institutions we regulate understand our commitment to enforcement of fair lending laws, and that consumers of the institutions we regulate are treated fairly and equitably under all applicable fair lending and consumer protection statutes.

Thank you, Mr. Chairman, Ranking Member Miller, and Members of the Subcommittee for the opportunity to present the views of the OTS on the critical subject of fair lending and consumer protection. I look forward to your questions.

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Business

Inland default notices see sharp rise

09:17 PM PDT on Tuesday, July 24, 2007

By LOU HIRSH
The Press-Enterprise

Lenders sent default notices to Inland homeowners at nearly triple the rate of a year ago, as owners continue to fall behind on payments amid a slump in the real estate market.

Statewide, default notices, the first step in the foreclosure process due to delinquent payments, were the highest in more than a decade, according to figures released Tuesday by DataQuick Information Systems.

DataQuick reported that in the Inland region, homeowners received 11,789 notices of default in the second quarter, rising from 4,126 default notices in the same quarter of 2006.

The number of homes that ended in foreclosure saw an even sharper increase, hitting their highest levels in a decade.

In Riverside County, foreclosures in the second quarter totaled 2,509, an increase of nearly 800 percent from 281 in the second quarter of 2006. That was a record for Riverside County, where the previous peak was 1,482 in the third quarter of 1997, according to DataQuick.

In San Bernardino County, 1,489 homes were foreclosed in the second quarter, up nearly 1,000 percent from 137 a year ago. That county's record is 1,761, hit in the third quarter of 1997.

Story continues below

Stan Lim / The Press-Enterprise
The highest foreclosure filings are in Fontana ZIP code 92336.

Reflecting a statewide trend, experts note that many who used subprime loans to purchase homes during the real-estate run-up of 2004-05 are now facing higher monthly payments because low introductory rates have expired.

"It's not an economic situation with job losses or a recession," said DataQuick analyst Andrew LePage. "It's more about risky financing packages and affordability constraints."

Experts say six months usually separate a notice of default from a foreclosure.

LePage noted that about half of California homeowners who were sent default notices are avoiding foreclosure by catching up with payments or selling the home. A year ago, 81 percent were avoiding foreclosure.

Some agencies that help consumers avert foreclosure have seen a sharp increase in calls for advice this year. Albert Tovar, assistant manager for foreclosure prevention at Springboard Nonprofit Consumer Credit Counseling in Riverside, said his office saw phone calls jump from 3,378 in January to 5,351 in April, and they still hover around 4,000 per month.

About 50 percent of callers end up requesting financial counseling, Tovar said. Twenty counselors advise clients on ways to lower their spending and change their lifestyles to allow room in their budgets for higher payments.

Those who can't make adjustments and are extremely pressed for cash may end up having to sell the home to carry away some spending money, even if they sell at a loss, Tovar said.

"They really have to decide how badly they want to keep the house," Tovar said, adding "most people tend to do whatever it takes to avoid foreclosure."

LePage noted that the state's more affordable regions are historically more vulnerable to foreclosures when housing markets experience downturns. That includes the Inland region, as well as the Central Valley, San Joaquin Valley, Sacramento and Stanislaus County.

DataQuick said the worst-hit neighborhoods in the Inland area and Central Valley might already be seeing property values eroded somewhat by foreclosures.

Statewide, the firm reported, 17,408 homes were lost to foreclosure in the second quarter. That was the highest number in DataQuick's statistics, going back to 1988, and a jump of nearly 800 percent from 1,936 a year ago.

According to Inland data from Irvine research firm RealtyTrac, the highest total foreclosure filings by ZIP code in the second quarter -- including default notices, trustee sale notices and bank repossessions -- were seen in Fontana 92336 (461), Murrieta 92563 (441), Hesperia 92345 (416), Rialto 92376 (368) and Victorville 92392 (359).

Reach Lou Hirsh at 951-368-9559 or lhirsh@PE.com

Default notices

Notices of default are the first step in the foreclosure process when payments are delinquent. California counties saw increases in defauts in the second quarter when compared to the same period last year.

Los Angeles: 126.6 percent

Orange: 137.8 percent

San Diego: 146.5 percent

Riverside: 190.7 percent

San Bernardino: 179.6 percent

Ventura: 134.3 percent

SoCal Total*: 1151.2 pereent

*Includes additional counties

Source: DataQuiek Information Systems

Related

Inland home sales plummet

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SANDRA F. BRAUNSTEIN
DIRECTOR
DIVISION OF CONSUMER
AND COMMUNITY AFFAIRS

September 10, 2007

The Honorable Melvin L. Watt
Chairman
Subcommittee on Oversight and Investigations
Committee on Financial Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am pleased to enclose my responses to your additional questions following the July 25 hearing before the Subcommittee titled, "Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement." I have also forwarded a copy to the full Committee for inclusion in the hearing record.

Sincerely,

Sandra F. Braunstein

Enclosure

Ms. Sandra F. Braunstein subsequently submitted the following in response to written questions received from Chairman Watt in connection with the July 25, 2007, hearing before the House Financial Services Subcommittee on Oversight and Investigations:

1. **On page 1 of your written testimony, you reference two nationwide lenders that the Federal Reserve had referred to the U.S. Department of Justice (DOJ) because the agency found evidence that Hispanic and African-American borrowers paid more for their loans than comparable white borrowers.**

   a. **Please provide details about these referrals.**

We referred two nationwide lenders this year to the Department of Justice (DOJ) for mortgage pricing discrimination. One referral was made in March and the other in June. For the pricing reviews that led to these referrals, we obtained detailed, loan-level data on mortgage originations in both 2004 and 2005 for each lender. These data included loan-to-value ratios, credit scores, and detailed loan product information, as well as the HMDA fields. We met with each lender and reviewed pricing information to fully understand the factors that could legitimately affect loan pricing. Based on our understanding of each lender's business practices, we built econometric models to test for discrimination. For both lenders, we found that African-American and Hispanic borrowers paid more than white borrowers, even after we took into account the legitimate pricing factors.

The first referral involved two of the fair lending risk factors that the federal banking agencies have identified and used for some time: (1) broad discretion in pricing; and, (2) financial incentives for loan officers or brokers to charge borrowers higher prices. The institution gave its loan officers discretion to charge overages and underages, that is, to set loan prices higher or lower than its rate sheet, which contained the institution's pricing terms. The institution also paid loan officers more if they charged overages. We found that African-American and Hispanic borrowers paid higher overages than comparable non-Hispanic whites in multiple Metropolitan Statistical Areas (MSAs). The second referral involved loans originated through mortgage brokers. This institution also permitted pricing discretion. We found that African-Americans and Hispanics paid higher annual percentage rates (APRs) than comparable non-Hispanic whites in multiple MSAs.

   b. **Describe in detail what actions DOJ took in response to these referrals.**

These matters are currently under review at the Department of Justice.

   c. **Describe in detail what happened with the four referrals you sent DOJ in 2006 referenced on page 4 of your written testimony.**

One of the four matters we referred to the Department of Justice in 2006 was returned for administrative resolution. This matter involved discrimination on the basis of age. The other three matters remain under review at the Department of Justice.

2. In the last five years, has the U.S. Department of Justice accepted for referral from your agency cases that contained only allegations of disparate impact? Please provide the name of the case(s) accepted by DOJ. Were any such cases remanded to you for administrative handling?

Pursuant to the Equal Credit Opportunity Act (ECOA), if we have reason to believe that a lender engaged in a pattern or practice of discrimination under ECOA, the matter is referred to the Department of Justice. Our analysis may be based on evidence of disparate treatment, disparate impact, or both. In the past five years, we have referred one matter to the Department of Justice in which one of two practices determined to be discriminatory was analyzed based solely on disparate impact. This matter is currently under review at the Department of Justice.

Additionally, in the past five years, DOJ returned another matter to the Federal Reserve for administrative resolution in which one of two practices determined to be discriminatory was analyzed based solely on disparate impact. This matter was referred to the Department of Justice over five years ago.

We cannot publicly disclose the names of institutions that we have referred to the Department of Justice because these actions arose from our confidential supervisory process.

3. Please describe in greater detail the "targeted pricing reviews" of lending institutions discussed on pages 8-9 of your written testimony.

During a targeted pricing review, we review an institution's lending record to determine whether any pricing disparity by race or ethnicity is fully attributable to legitimate factors, or whether any portion of the pricing disparity may be attributable to illegal discrimination. To perform these reviews, we use analytic techniques that account for the increasing complexity of the mortgage market. Two industry changes in particular – the proliferation of product offerings and the increased use of risk-based pricing – have significantly increased the complexity of fair lending reviews. It is not uncommon for a lender to offer many different products, each with its own pricing based on a borrower's credit risk.

To effectively detect discrimination in the expanding range of products and credit risk categories, we use statistical techniques. When we perform a pricing review, we typically obtain extensive proprietary, loan-level data on all mortgage loans originated by the lender, including prime loans, not just higher-priced loans reported under HMDA. These data include variables such as annual percentage rates, loan-to-value ratios, credit scores, detailed loan product information, and documentation type. If available, we also obtain additional pricing measures, such as overages, yield spread premiums, and various fees. To determine how to analyze these data, we carefully study the lender's specific business model, pricing policies, and product offerings. We also generally meet with the lender's employees who are most knowledgeable about pricing policies to ensure that we fully understand the factors that a lender considers in pricing loans. With respect to product offerings, we take great care in defining the products or class of products we analyze. For example, a lender might offer several 30-year hybrid adjustable rate mortgages (ARMs), each having a different fixed-rate period before the interest rate adjusts, such as a 3-1 ARM, a 5-1 ARM and a 10-1 ARM. Because the lender's own cost of funds will be different for each of these products, each will have different pricing that must be considered in our analysis.

Based on a careful analysis of the lender's policies, we determine which factors from the lender's data we should consider. We then create a statistical model that is tailored to that specific lender. Depending on the lender's size and business model, we may analyze multiple products in the same model, or create separate models for specific products. We typically will separately test for discrimination in particular geographic markets, such as MSAs. We have found that lenders with relatively small unexplained pricing disparities at the national level may nonetheless have much larger disparities in individual markets.

Based on our pricing reviews, we had reason to believe that the two lenders we referred to the Department of Justice engaged in a pattern or practice of discrimination. After accounting for legitimate factors reflected in the lenders' specific pricing policies, minorities still paid more for their mortgages than non-Hispanic white borrowers in multiple MSAs. Prior to referring the lenders to the Department of Justice, each lender was provided with our preliminary findings and had an opportunity to rebut them. Neither lender, however, provided us with evidence that effectively rebutted our findings. These referrals are currently under review at the Department of Justice. In the remaining HMDA pricing reviews that we have completed, we found that minorities did not pay more than comparable non-Hispanic white borrowers, after taking into account the legitimate factors that the lenders used to price loans.

4. As part of fair lending examinations, describe in detail the processes you have in place to detect disparate treatment of mortgage loan applicants (e.g., steering of minorities to higher-priced loans, discrepancies in time spent and information provided to protected classes)?

Federal Reserve consumer compliance examiners use the Interagency Fair Lending Examination Procedures and statistical analyses to detect disparate treatment. They also receive specialized training to conduct fair lending examinations. Examiners identify risk factors, conduct appropriate analyses to detect unlawful discrimination and take appropriate actions when discrimination is found.

Examiners look for indicators of potential disparate treatment on a prohibited basis, such as race or national origin. They review an institution's compliance management program, loan underwriting and pricing policies, loan officer compensation policies, and lending data. Examiners also review lending information, contained in reports and loan files, to determine whether there are differences with respect to the time it takes to process applications, the proportion of applications that are withdrawn or incomplete, the number and type of exceptions made to underwriting criteria, and overrides of credit score cutoffs based on prohibited basis characteristics. Vague or subjective policies may prompt an examiner to further review a bank's lending record to determine whether these policies are implemented in a discriminatory manner.

Examiners also look for potential steering of minorities to higher priced loans. If an institution makes both prime and subprime loans for the same purpose, such as for home purchases, differences in the percentages of prohibited basis group borrowers in various loan product categories are evaluated to determine whether they are significant and merit further review. If an institution has subprime mortgage subsidiaries or affiliates, examiners evaluate the various loan products offered, grouped by prohibited basis, to determine if there are differences in the percentage of applications received by applicants in different prohibited basis groups at the institution compared to any of its subsidiaries or affiliates. Examiners also consider whether the institution has clear, objective standards for referring applicants to subsidiaries or affiliates, classifying applicants as "prime" or "subprime," or deciding what kinds of alternative loan products should be offered or recommended to applicants. To identify potential indicators of redlining, examiners review a lender's office locations and areas targeted through marketing.

When conducting fair lending examinations, examiners may rely upon statistical analysis, report and loan file reviews, information learned from interviews conducted with bank staff and, when appropriate, third parties, as well as additional information obtained from the institution. Examiners evaluate the validity and credibility of explanations offered by an institution for any differences in actions taken or loan terms offered that appear to be related to a prohibited basis. Information regarding peer performance may also help an examiner to understand a bank's performance, although peer performance by itself does not justify an institution's failure to market or lend in an area. After completing appropriate follow-up, and in consultation with staff of the Board's Fair Lending Enforcement Section, examination findings are finalized and appropriate supervisory action taken.

5. How does the Federal Reserve ensure that individual victims are notified of and compensated for a financial institution's discriminatory practices in cases resolved through conciliation?

The Federal Reserve has policies and procedures to ensure that fair lending violations are effectively remedied. An institution that engages in discriminatory practices must take action to ensure that the discrimination does not recur and correct the effects of the violations that did occur.

If a violation of law is isolated, rather than a pattern or practice, we act on our own to make sure it is remedied. Through an examination report or a supervisory letter, the Federal Reserve notifies a financial institution about discriminatory violations and requires the institution to take corrective action related to findings of discrimination. In addition, institutions with violations involving discrimination are typically subject to formal or informal supervisory enforcement actions, such as Board resolutions or Memoranda of Understanding. The type of supervisory enforcement action depends on the severity of the violations found, as well as institution management's ability and willingness to correct those violations.

Regardless of the supervisory action used, institutions must take action to remediate those harmed by violations involving discrimination. Corrective action may include soliciting new credit applications, adjusting the terms of credit granted, or refunding fees and interest charged as a result of the discriminatory practices. To prevent violations from recurring, changes are typically made to the institution's written compliance program, internal controls program and employee training program. Employees involved in the lending process must receive appropriate training to ensure that they understand the fair lending laws. Federal Reserve Bank supervision staff closely monitor the status of an institution's corrective actions through ongoing supervision.

We find that in the overwhelming majority of cases management voluntarily addresses violations or weaknesses. In those rare instances where the bank is not willing to address the problem, we have a full range of enforcement tools at our disposal to compel corrective action.

If we have reason to believe that there is a pattern or practice of discrimination under ECOA, the Board, like the other federal banking agencies, has a statutory responsibility under that Act to refer the matter to DOJ, which reviews the referral and decides if further investigation is warranted. A DOJ investigation may result in a public civil enforcement action or settlement. DOJ may decide instead to return the matter to the Federal Reserve for administrative enforcement. When this occurs, we ensure that the institution corrects the problems and makes amends to the victims, as described above.

Unlike the United States Department of Housing and Urban Development, however, the Federal Reserve does not conciliate complaints between lenders and consumers.

6. Should the Federal Reserve contract with private fair housing organizations to conduct comprehensive mortgage lending testing programs?

Following the Interagency Fair Lending Examination Procedures, Federal Reserve examiners regularly conduct fair lending examinations to detect illegal discrimination, such as redlining, underwriting discrimination, pricing discrimination and steering. During an examination, examiners interview employees of the institution, review policies and procedures, and have full access to the institution's loan files. Federal Reserve economists may also conduct statistical analyses of the institution's lending record. These analyses often involve the review of thousands of loan applications or originations. We believe that these techniques are effective. In fact, we referred five institutions to the Department of Justice in the first six months of this year because we had reason to believe that they engaged in a pattern or practice of discrimination.

We recognize that testing is another potential method to detect illegal discrimination. In light of our full access to an institution's records, however, we believe that our examination techniques effectively detect discrimination. Accordingly, we do not currently plan to contract with private fair housing organizations to conduct testing.

7. Would the Federal Reserve support an exemption to allow mortgage lending testers to provide false information on loan applications facilitating testers' involvement beyond the pre-application phase of the mortgage lending process?

The Federal Reserve is not aware of any specific legislative proposals to amend the criminal code in this way and does not have a position on this issue. We anticipate that any proposal to amend the federal criminal code to permit mortgage lending testers to provide false information would raise complex issues and require careful study.

8. How do your staffing resources dedicated to fair lending compliance and enforcement compare to your staffing resources dedicated to protecting safety and soundness?

As of June 30, 2007, the Federal Reserve had 287 specialized consumer compliance examiners. These examiners are responsible for conducting consumer compliance examinations, which includes a review of compliance with the fair lending laws, as well as Community Reinvestment Act (CRA) examinations. The Federal Reserve conducts consumer compliance examinations for state member banks with assets of $250 million or more and satisfactory compliance records every 24 months. State member banks with assets of less than $250 million and satisfactory compliance records are examined on a frequency schedule of 48 or 60 months, depending on their assigned CRA rating. All state member banks with less than satisfactory consumer compliance ratings are examined every 12 months.

The Federal Reserve had 876 safety and soundness examiners as of June 30, 2007. They conduct examinations every 12 or 18 months depending on the size of the institution supervised and its examination rating. The differences in the examination frequency for compliance examinations compared to safety and soundness examinations is based, in part, on differences in law dictating examination frequency policies.

9. What role do consumer complaints play in the Federal Reserve's fair lending enforcement process?

Federal Reserve staff conducts thorough investigations of consumer complaints alleging credit discrimination in accordance with specific policies and procedures. Reserve Bank staff interview consumers who file a discrimination complaint in order to gather relevant information directly from the complainant. Personal contact between Reserve Bank staff and the complainant helps to clarify issues raised and facilitates a thorough investigation of allegations. The Reserve Bank reviews all relevant information provided by the complainant and the bank. On-site investigations are conducted if necessary. Investigation findings are documented and necessary supervisory actions are taken to remedy a violation or address a bank's potential risk regarding matters noted during the complaint investigation. Consumer complaints are also routinely considered when setting the scope of each fair lending review as part of the consumer compliance examination.

10. In July 2007, the FTC (along with the Federal Reserve, OTS and state regulators) announced a pilot project to conduct "targeted consumer protection compliance reviews and investigations of certain non-bank subsidiaries of bank holding companies with significant subprime mortgage operations." Describe in detail this pilot project, the status and the results obtained from it.

The Federal Reserve, the Office of Thrift Supervision, the Federal Trade Commission, and state agencies represented by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are cooperating in an innovative pilot project to conduct targeted consumer-protection compliance reviews of selected non-depository lenders with significant subprime mortgage operations.

The collaborative state/federal pilot is scheduled to begin in the fourth quarter of this year and will focus on non-depository subsidiaries of bank and thrift holding companies, as well as mortgage brokers doing business with, or working for, these entities. Additionally, the states will conduct coordinated examinations of independent state-licensed subprime lenders and their associated mortgage brokers. The agencies will select a sample of entities under their respective supervisory or other authorities for review or investigation. The agencies will also share information about the reviews and investigations, take action as appropriate, collaborate on the lessons learned, and seek ways to better cooperate in ensuring effective and consistent reviews of these institutions.

The agencies plan to evaluate the companies' underwriting standards, as well as senior management oversight of the risk-management practices used for ensuring compliance with state and federal consumer protection regulations and laws, including the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, the Federal Trade Commission Act, and the Home Ownership and Equity Protection Act. The agencies will initiate appropriate corrective or enforcement action as warranted by the findings of the reviews or investigations.

11. The regulations implementing the Community Reinvestment Act (CRA) dictate that evidence of discriminatory or other illegal credit practices adversely affect a bank's CRA performance. As such, please describe how a bank's fair lending violations affect an institution's CRA rating. To your knowledge, have fair lending violations (including those resolved by settlement or consent decree) adversely affected the CRA ratings of institutions under your jurisdiction? If so, which institutions and what was the result?

Under the CRA regulations, a bank's CRA performance is adversely affected by evidence that a bank engaged in illegal discrimination, or was involved in other illegal credit practices that are inconsistent with helping to meet community credit needs. Various factors, including the nature and extent of discriminatory practices, the policies and procedures in place to prevent such practices, corrective action taken by the bank, and other relevant information will be taken into account in determining how the bank's assigned CRA rating and public CRA Performance Evaluation will be affected by evidence of discriminatory or other illegal credit practices. The bank's public CRA Performance Evaluation includes a discussion of whether or not violations found at the bank negatively impacted the bank's overall CRA rating. With respect to evidence of illegal credit practices by an affiliate, the violations will be considered if loans originated by the affiliate were considered in the CRA examination as part of the bank's lending performance.

Two examples involving banks with CRA ratings that were downgraded based on discrimination or other illegal credit practices are First American Bank of Carpentersville, Illinois, and The Peoples Bank and Trust Company of Selma, Alabama. As reflected in the public record, DOJ reached a settlement with First American Bank in July 2004 after investigating allegations of discriminatory redlining based on a referral made by the Board. Based on its determination that the bank's practices illegally prevented or discouraged the residents in the redlined area from obtaining equal access to credit, the Board lowered First American's CRA rating to "Substantial Noncompliance," the lowest rating possible. In the case of The Peoples Bank and Trust Company, fair lending violations found during the compliance examination caused its 2003 CRA examination rating to be downgraded from "Outstanding" to "Satisfactory." The public Performance Evaluation states:

> Substantive violations of Sections 202.4(a) and 202.6(b)(1) of Regulation B were identified at the compliance examination, dated October 20, 2003. While the performance tests alone would otherwise indicate a rating of "Outstanding," the fair lending issues caused a downgrade to a rating of "Satisfactory."

An example of a situation where the bank's CRA rating was not downgraded for fair lending violations involved Regions Bank of Birmingham, Alabama. The public CRA Performance Evaluation for 2003 states:

> A substantive Regulation B violation, which was limited to one product line, was disclosed at the most recent compliance examination. The issue was self-discovered by Regions and the bank immediately exercised self-correction. In addition, the bank exited the line of business in April 2004. The Regulation B violation occurred despite Regions Bank's policies, training programs, and internal control procedures to prevent discriminatory or other illegal practices.

12. Does the Federal Reserve have any legislative or regulatory recommendations to enhance fair lending enforcement? Do you need additional tools from Congress or your agency?

The Federal Reserve does not have any recommendations to Congress at this time to enhance fair lending enforcement.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Director

September 18, 2007

The Honorable Melvin Watt
United States House of Representatives
Washington, D.C. 20510

Dear Chairman Watt:

This letter is in response to post-hearing questions for the record pertaining to the July 25, 2007 Oversight and Investigations Subcommittee hearing entitled, Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement. The answers to your questions are set forth below.[1]

1. Describe in detail your fair lending monitoring and enforcement program for non-bank mortgage companies.

The Commission has numerous responsibilities regarding consumer financial issues.[2] As part of its mandate to protect consumers, the Commission enforces Section 5 of the FTC Act, which broadly prohibits unfair or deceptive acts or practices in or affecting commerce.[3] As you know, the FTC Act and other laws enforced by the Commission specifically exempt banks, savings and loan institutions, and federal credit unions from the agency's jurisdiction. Thus, for the non-bank entities subject to the agency's jurisdiction, the Commission engages in law enforcement investigations and, unlike other financial regulatory agencies, does not conduct regular examinations of those entities.

Section 5 of the FTC Act has provided the principal basis for much of the Commission's mortgage lending enforcement. The Commission is one of several agencies that enforce a

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1 The views expressed in the Commission's written statement represent the views of the Commission. My responses to your questions are my own, however, and do not necessarily reflect the views of the Commission or any individual Commissioner.

2 The Commission's June 13, 2007 testimony before the House Committee on Financial Services enumerated in detail the agency's activities in the financial services sector. The Commission's statement is available at www.ftc.gov/os/2007/06/070613statement.pdf.

3 15 U.S.C. § 5(a).

number of laws specifically governing lending practices, including the Equal Credit Opportunity Act ("ECOA"),[4] which prohibits discrimination against applicants for credit on the basis of race, national origin, sex, marital status, age, or other prohibited factors; the Truth in Lending Act ("TILA"),[5] which requires disclosures and establishes certain substantive requirements in connection with consumer credit transactions; and the Home Ownership and Equity Protection Act ("HOEPA"),[6] which, as part of the TILA, provides special protections for consumers in certain high-cost refinance loans secured by their homes.

In addition to our ongoing investigations and cases involving deceptive or unfair lending practices, the Commission also is engaged in several ongoing, non-public fair lending investigations of mortgage lending companies. The Commission uses the Home Mortgage Disclosure Act ("HMDA") data as a screening or targeting tool for fair lending compliance investigations. The Federal Reserve Board collects and provides to the Commission information and analysis regarding HMDA data. The Commission staff reviews this analysis and also performs its own, independent analysis of the data. Although some pricing data and loan applicant information are available in the HMDA reports, the data overall are limited. For example, the data do not include the many other criteria lenders typically use to evaluate the risk of a loan, such as borrower credit scores, loan-to-value ratios, debt-to-income ratios, loan type, or the length of the loan. Thus, the HMDA data alone are insufficient to establish a law violation. Rather, the Commission uses the reported data to identify lenders originating higher-priced loans or denying loans for protected classes, in particular for minorities compared to non-minorities. The disparities in denial rates or pricing, however, may be explained by information on the many credit characteristics and loan terms that are not contained in the HMDA data. Consequently, the principal goal of a fair lending investigation is to determine whether or not the differences in outcomes persist after legitimate underwriting criteria are taken into account.

Typically, an investigation begins with substantial requests for information directed to the target lender. We seek documents that give us a full picture of the target's lending operations, including its underwriting policies and procedures, the extent and nature of the loan products offered, and the role of discretion in any underwriting and pricing decisions. As part of the initial inquiry, the Commission staff also obtains the documents and data necessary to test the technical accuracy of the HMDA data filed by the target lender. If we discover that a lender has filed inaccurate or incomplete HMDA data, lenders frequently refile a correct and complete version of their HMDA data voluntarily with appropriate notice given to the agency staff.

After ensuring the accuracy of the data, the Commission staff then obtains from the target all of the criteria and data used by the lender to underwrite the mortgage loans. The staff investigates the underwriting model, as well as any pricing discretion the lender allows. The

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[4] 15 U.S.C. § 1691. Congress directed the Federal Reserve Board to implement the ECOA through Regulation B, 12 C.F.R. § 202.

[5] 15 U.S.C. §§ 1601-1666j.

[6] 15 U.S.C. § 1639.

FTC staff economists then carefully analyze the underwriting data, employing rigorous statistical protocols, to determine whether the disparities persist after credit risk and other legitimate factors used to price the loan are taken into account. The staff also investigates whether the lender engages in fair lending compliance monitoring and may conduct interviews of current and former employees or officers of the target and other related entities possessing relevant information.

Currently, the Commission is engaged in several ongoing, non-public fair lending investigations of mortgage lending companies. The determination of whether a law violation occurred requires the resource-intensive and careful review of all of the statistical analyses and the additional facts obtained through extensive document review and other evidentiary sources. The Commission has a strong commitment to enforcing the fair lending laws and will pursue vigorously any violations revealed by its investigations.

2. Would the FTC support expanding the HMDA data fields to include:

i. Pricing data on all loans, and not just higher-priced loans

ii. Information on the original channel of the loan, including whether the loan was originated by a mortgage broker?

iii. Age of the borrower?

Please explain the reasons for each response.

FTC staff do not have sufficient information about the costs to lenders of reporting this additional data to know whether the benefits of additional information would outweigh these costs. As our investigations proceed, FTC staff will assess further the value of expanding the HMDA datafields and will confer with our law enforcement and banking agency colleagues on these issues.

3. On page 13 of your written testimony, you indicated that mortgage brokers now originate between 65-70% of all mortgage loans. Do you have adequate tools to enforce fair lending laws against mortgage brokers without HMDA data? If not, what can the FTC do to improve supervision? What should Congress do?

I believe the ECOA and Section 5 of the FTC Act provide adequate and effective tools to police the lending practices of mortgages brokers. Section 5 of the FTC Act, for example, gives us the authority to challenge unfair or deceptive acts or practices and has been the basis for much of our fair lending enforcement efforts. In the past nine years, we have brought 21 actions alleging deceptive or unfair lending and servicing practices by mortgage brokers, lenders and servicers, with a particular focus on subprime lending practices, and have obtained over $320 million in redress for consumers. I believe our enforcement record is a strong one, and speaks to the agency's ability to address broader fair lending problems, including predatory lending, involving mortgage brokers and other key players in the lending marketplace.

4. **In the last five years, has the U.S. Department of Justice accepted for referral from your agency cases that contained only allegations of disparate impact? Please provide the name of the case(s) accepted by DOJ. Were any such cases remanded to you for administrative handling?**

The FTC has not referred a case in the last five years to DOJ that contained only allegations of disparate impact. During this time period, the FTC referred to DOJ for filing a complaint and consent decree as to Sprint Corporation, imposing a $1.25 million civil penalty to settle charges that it failed to notify certain applicants for telephone service – which qualifies as credit under the ECOA – that it took adverse actions based on the consumers' credit reports in violation of ECOA and the Fair Credit Reporting Act. *United States v. Sprint Corporation*, Civ. No. 4:04CV361 RH/WCS (N.D. Fla. 2004). As discussed in response to Question No. 3, above, most of our mortgage lending cases involved allegations of Section 5 of the FTC Act in which the Commission used its equitable authority to obtain redress for consumers harmed by the alleged practices. These cases are filed by the Commission in its own name and are not referred to the Department of Justice.

5. **You mention on page 9 of your written testimony that the FTC has brought "over two dozen cases enforcing ECOA...". Over what time period? Did any of those cases result in civil penalties or injunctive relief? Describe the disposition of each of those cases.**

Since 1978, the Commission has brought over 40 cases alleging violations of the ECOA, and each order obtained included injunctive relief prohibiting violations of the ECOA. The Commission has obtained a total of approximately $5.5 million in civil penalties for alleged ECOA violations. In addition, in two of these cases, the Commission obtained a total of $1.6 million in consumer redress. *See* Attachment A to this letter for the list of cases brought by the FTC that include allegations of ECOA violations, including the amount of civil penalties or redress obtained for those alleged violations.

6. **In July 2007, the FTC (along with the Federal Reserve, OTS and state regulators) announced a pilot project to conduct "targeted consumer protection compliance reviews and investigations of certain non-bank subsidiaries of bank holding companies with significant subprime mortgage operations." Describe in detail this pilot project, its current status and the results obtained from it.**

The agencies will cooperate in the pilot project to conduct targeted consumer-protection compliance reviews of selected non-depository lenders with significant subprime mortgage operations. The agencies will select a sample of entities under their respective authorities for review or investigation. The FTC has jurisdiction over the non-bank subsidiaries of bank holding companies and over the other non-depositary lenders that may be involved.

The agencies will also share information about the reviews and investigations, take action as appropriate, collaborate on the lessons learned, and seek ways to better cooperate in ensuring effective and consistent reviews of these institutions. By joining together in applying a coordinated review program, the regulatory agencies will be better positioned to evaluate and more consistently assess subprime mortgage lending practices across a broad range of mortgage lenders and other participants within the industry.

The FTC currently is working with the other agencies to define the scope of the examinations and investigations that the agencies will conduct as part of the project.

7. For more than a decade, the FTC has been a member of the Interagency Task Force on Fair Lending (along with DOJ, HUD and the federal banking agencies). What exactly does this Task Force do, and how often does it meet? Describe any recommendations you have to make it more effective.

The purpose of the Task Force is to work together to share information on lending discrimination and predatory lending enforcement and policy issues. Task Force members also share information, as appropriate, about targets, developments in the law and marketplace, and trends in consumer complaints. The Task Force has published a Policy Statement on Lending Discrimination[7] and meets about every two months to discuss fair lending issues. In addition, staff from three of the Task Force agencies – the FTC, DOJ, and HUD – meet every two months also to discuss legal and policy developments and issues, to share specific information relating to fair lending targeting, and to coordinate enforcement activities as appropriate. These interagency communications are effective in ensuring that staff share appropriate information about fair lending enforcement and policy issues.

8. How does the FTC ensure that individual victims are notified of and compensated for a financial institution's discriminatory practices in cases resolved through conciliation?

Typically, we do not intervene or conciliate individual disputes. Rather, as a law enforcement agency, we use our resources to target larger patterns of discrimination. In those investigations that result in law enforcement actions where redress to consumers is appropriate, the FTC obtains customer information directly from the company, typically during the investigation of the matter and, with that information, assesses the proper scope of monetary relief for affected consumers. For example, in *United States v. Shawmut Mortgage Co.*, Civ. No. 93CC-2453 AVC (D. Conn.1993), a case brought jointly by the FTC and DOJ, the government distributed an average of $10,000 per borrower in redress to 96 black and Hispanic applicants identified as persons who would have obtained credit had the standards applied to white borrowers been applied to them. In the Commission's most recent lending cases, described in the Commission's July 25, 2007 testimony[8] and brought since 1998, we obtained consumer records both from interviewing consumers who complained and from obtaining information directly from the defendants.

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7 *See* Notice of Approval and Adoption of "Policy Statement on Discrimination in Lending" and Solicitation of Comments Regarding its Application, 59 Fed. Reg. 18,266 (Apr. 15, 1994).

8 *See* http://www.ftc.gov/os/testimony/P064806hdma.pdf

In cases where the agency anticipates that consumers will receive redress as a result of a law enforcement action, the staff ensures it has updated address information for consumers by using the U.S. Post Office's National Change of Address database to update consumer information. Finally, the FTC often establishes toll-free phone numbers (publicized in press releases and on the FTC's Web site) for consumers to call if they need to update their address information or make claims.

9. Should the FTC contract with private fair housing organizations to conduct comprehensive mortgage lending testing programs?

Where appropriate, testing can be a valuable tool in determining whether there are certain types of differences in treatment based on prohibited factors, such as pre-application treatment. Indeed, before the loan underwriting process became highly automated and speedy, as described below, the agency made frequent use of pre-application testing to select targets for further investigation. However, as explained below, testing for discrimination in loans actually made after application poses numerous practical and legal hurdles which impede its usefulness as a cost-effective law enforcement tool.

Loan underwriting involves evaluation of numerous factors, including credit score, loan-to-value ratio, debt to income ratios, and property characteristics, to name just a few. And, with modern technology, after receiving a loan application, lenders typically immediately check credit report and other database information in evaluating the application. This means that any "matched pair" testing must match testers on numerous complex credit and property characteristics to be a useful test for discrimination. Moreover, it is not possible to use testers with "fake" identities if the tester applies for a loan, because it is illegal to provide false information on a loan application. Even if this legal restriction were changed, however, testing for discrimination in actual loans made would still face formidable hurdles to be effective and worthwhile because fake credit reports and other information would have to be created to survive a lender's review; any discrepancies in the application and databases checked may be a signal to the lender of potential fraud, and taint the test. Thus, given the speed and sophistication of the loan underwriting process, it is not likely that post-application testing, where consumer injury is the greatest, would be a worthwhile expenditure of the FTC's law enforcement resources. Further, in light of the agency's ability to select and investigate targets based on the HMDA data and other available information, I believe our current law enforcement approach is a more effective use of resources.

10. What role do consumer complaints play in the FTC's fair lending enforcement process?

Complaints from consumers are vital to our consumer protection mission. Although we cannot intervene in individual complaints, each complaint assists the Commission as it enforces the consumer protection laws. In targeting cases and as part of the agency's investigations, the FTC's staff reviews fair lending complaints in addition to its use of the HMDA data.

11. Does the FTC have any legislative or regulatory recommendations to enhance fair

lending enforcement? Do you need additional tools from Congress for your agency?

The Commission does not have any legislative or regulatory recommendations at this time. I believe the agency has sufficient authority from Congress to continue its fair lending enforcement efforts.

***

I appreciate the opportunity to respond to these questions. If you or your staff have any additional questions or comments or wish to provide additional information, please contact me or have your staff call Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,

Lydia B. Parnes

Lydia B. Parnes
Director

ATTACHMENT A

FTC v. Capital City Mortgage Corp. et al, Civ. No 98CV00237 (D. D.C. 2005)($750,000 in consumer redress).

United States v. Sprint Corporation, et al., Civ. No. 4:04CV361 RH/WCS (N.D. Fla. 2004)($1,125,000 civil penalty).

FTC v. Citigroup, Inc. et al., Civ. No. 010CV-0606 (N.D. Ga. 2001)(consumer redress obtained for consumers allegedly harmed by defendants' deceptive marketing practices; complaint also alleged failure to maintain applicant records as required by Section 202.12 of Regulation B).

United States v. Action Loan, Inc., Civ. No. 3:00CV-511-H (W.D. Ky. 2000)($350,000 civil penalty and$25,000 in consumer redress to resolve violations of the TILA).

United States v. Ford Motor Credit Co.,Civ. No. 99-75887 (E.D. Mich. 1999)($650,000 in consumer redress).

United States v. Franklin Acceptance Corporation, Civ. No 99-CV-2435 (E.D. Penn. 1999)($800,000 civil penalty).

United States v. Bonlar Loan Co., Inc., Civ. No. 97C 7274 (N.D. Ill. 1997)($40,000 civil penalty).

United States v. The Money Tree, Inc., Civ. No 6-97-CV-7 (M.D. Ga. 1997)($75,000 civil penalty).

United States v. J.C. Penney Company, Civ. No. CV -96-4696 (E.D. N.Y.1996)($225,000 civil penalty).

Federal Trade Commission v. CIT, Civ. No. 94-4092 (AWM) (D. N.J.1994)($150,000 civil penalty).

United States v. Shawmut Mortgage Co. Civ. No. 93CC-2453 AVC (D. Conn. 1993)($960,000 in consumer redress, including $160,000 paid in lieu of a civil penalty).

United States v. PaineWebber, Civ. No. WN92-2921 (D. Md.1992)($10,000 civil penalty).

United States v. Academic International, Civ. No. 1:91-CV-2738(N.D. Ga.1991)($150,000 civil penalty).

United States v. BarclaysAmerican, Civ. No. C-C-91-14-MU (W.D. N.C.1991)($265,000 civil penalty).

United States v. Tower Loan of Mississippi, Civ. No. J90-0447(J) (S.D. Miss. 1990)($175,000 civil penalty).

United States v. Blake, Civ. No. 90-1064 (W.D. Okl. 1990) and Civ. No 09-247OHB (W.D. Tenn. 1990)($55,000 civil penalty).

United States v. Chesterfield, Civ. No. 90 C 0347-S (N.D. Al.1990) (Companion cases filed in Tennessee, Georgia, and Texas)($90,000 civil penalty).

United States v. City Finance, Civ. No.1:90-cv-246-MHS (N.D. Ga.1990)($50,000 civil penalty).

United States v. William Lee Moore III (dba Signature Loan), Civ. No. N89-2531-F (N.D. Tex. 1989)($12,500 civil penalty).

United States v. GECC, Civ. No. N89-483 (D. Conn.1989)($275,000 civil penalty).

United States v. Wanamakers, Civ. No. 89-1466 (E.D. Penn. 1989)($90,000 civil penalty).

United States v. Norwest, Civ. No. 87 06025R (C.D. Cal.1987)($135,000 civil penalty).

United States v. Fireside Thrift, Civ. No. C86-2379 (N.D. Cal.1986)(consent decree entered. The case was brought by the Department of Justice in its own name after the creditor who was previously subject to the jurisdiction of the FTC became FDIC-insured following the FTC investigation).

Federal Trade Commission v. Green Tree Acceptance, Civ. No. CA 4 86 468 K (N.D. Tex. 1986)($115,000 civil penalty).

United States v. Strawbridge and Clothier, Civ. No. 85-6855 (E.D. Penn. 1985)($70,000 civil penalty).

United States v. Fidelity Acceptance, Civ. No. 3-85-1588 (D. Minn. 1985)($235,000 civil penalty).

United States v. Allied Finance, Civ. No. CA3-85-1933F (N.D. Tex 1985)($125,000 civil penalty).

United States v. Winkelman Stores, Civ. No. C-85-2214 (N.D. Ohio 1985)($65,000 civil penalty).

United States v. Landmark Finance ,Civ. No. –84-5310 (D. Md. 1984)($90,000 civil penalty).

United States v. Security Pacific, Civ. No. 832 647 N (CM) (S.D. Ca. 1983)($140,000 civil penalty).

United States v. Allied Stores, Civ. No. 83-2730 (S.D. N.Y. 1983)($147,000 civil penalty).

United States v. ITT CFC, 816 F. 2d 487 (9th Cir.1987)(Court ruled for defendant on summary judgment motion).

United States v. Aristar, Civ. No. 83-0719 (S.D. Fla. 1983)($90,000 civil penalty).

United States v. Beall's, Civ. No. C-82 989 (M.D. Fla. 1982)($10,000 civil penalty).

United States v. Lender Service, Civ. No. 82-C-851-E (N.D. Okla. 1982)($10,000 civil penalty).

United States v. Georgia Telco, Civ. No. 80-1217A (N.D. Ga.1982)($10,000 civil penalty).

United States v. Amoco Oil Co., Civ. No. 80-1071 (D.D.C. 1980)($200,000 civil penalty).

United States v. Montgomery-Ward, Civ. No. 78-1412 (D.D.C.1979)($175,000 civil penalty).

United States v. Federated Department Stores, Civ. No. C-1-78-730 (E.D. Va. 1979)($50,000 civil penalty).

In the Matter of Westinghouse Credit Corp., 94 FTC 1280 (1979).

In the Matter of Alden's, Inc., 92 FTC 901 (1978).

The House Oversight and Investigations Subcommittee
of the Financial Services Committee Hearing on
"Rooting Out Discrimination in Mortgage Lending:
Using HMDA as a Tool for Fair Lending Enforcement"

Department of Housing and Urban Development's
Responses to Questions for the Record

1. **Does HUD's staffing capacity affect its ability to pursue "Secretary-initiated" investigations under the Fair Housing Act or delay its ability to investigate and resolve individual complaints of discrimination? If so, how and what are your recommendations to address this?**

   The Department has sufficient staff to pursue Secretary-initiated investigations. This year alone, HUD has commenced 15 Secretary-initiated actions---more than HUD has undertaken in the past ten years combined. Two of those actions have been Secretary-initiated investigations into mortgage lenders.

   The Department has sufficient staff to timely and thoroughly investigate the more than 2,500 complaints it receives each year. In fact, HUD has significantly reduced the time it takes to investigate individual cases, without allowing such efficiency to adversely affect the outcome of cases. In FY1996, HUD completed 16% of its cases within 100 days. By FY2006, HUD had increased that percentage to 61%. HUD conducted more timely investigations, while maintaining the same rate of positive resolution of cases through conciliation or a finding of discrimination (39% in FY1996 and 37% in FY2006).

2. **On page 3 of your written testimony, you reference an $885,000 civil damages penalty paid to the Pennsylvania Human Relations Commission, one of HUD's state and local Fair Housing Assistance Program (FHAP) agencies.**

   a. **Does HUD believe that civil penalties alone satisfy the public interest and serve as an effective deterrent to mortgage lending discrimination?**

   As explained in the testimony, the $885,000 that the Pennsylvania Human Relations Commission ordered the lender to pay to the homeowners was <u>not</u> a civil money penalty, but actual damages to the homeowner for the injuries they suffered, which included embarrassment and emotional humiliation. Though it was not mentioned in the testimony, the Commission also awarded $25,000 in civil penalties, the maximum amount allowed under Pennsylvania law.

   HUD always pursues actual damages for complainants; it seeks civil penalties in addition to these damages. In addition, HUD pursues public interest relief, such as injunctive relief, payments to fair housing organizations, or changes in a respondent's policies and practices.

b. Setting aside investigations by state and local FHAP agencies, how many investigations and lawsuits are pending that were brought solely by HUD? Describe each of these investigations and lawsuits.

HUD is currently investigating 89 lending complaints filed by individuals or organizations. This total includes any case that alleges discriminatory financing or redlining. Attachment A contains details on each of these complaints, specifically, the date the case was filed, the name of the respondents, the location of the violation, the basis for the complaint, and the violations alleged. The names of the complainants have been withheld in order to protect their privacy.

3. On page 3 of your written testimony, you mention that HUD has set aside $900,000 to encourage state and local agencies to address predatory lending.

a. Is this sufficient money to address predatory lending nationwide?

The $900,000 set-aside funds the specific fair lending assistance project referenced in the testimony (hereinafter "the project"), which will help develop strategies state and local agencies may adopt nationwide to address lending discrimination and predatory lending practices in their communities. With this funding, the Department is able to fund the best fair lending proposals submitted by agencies in the Fair Housing Assistance Program (FHAP).

However, this project is only a part of HUD's efforts to combat predatory lending and lending discrimination. The Office of Fair Housing and Equal Opportunity (FHEO) also investigates individual cases of lending discrimination and provides funds by state and local FHAP agencies to support their investigations. In addition, the HUD-administered Fair Housing Initiatives Program (FHIP) provides grants to fair housing and fair lending organizations such as National Community Reinvestment Coalition and ACORN to address lending discrimination through education and outreach or enforcement.

Furthermore, HUD's Housing Counseling Program educates potential homebuyers so that they better understand the process of buying or leasing a home and better understand their rights. An educated consumer is much less likely to be taken advantage of or to enter into an overly expensive housing transaction. For this reason, HUD has significantly boosted funds for housing counseling--- from $8 million in 2001 to the $50 million proposed in the President's budget for the coming year.

Finally, HUD is seeking to modernize the Federal Housing Administration (FHA) so that the Department can further protect homebuyers from unsafe loans and predatory lenders who target particular populations. Last fall, HUD established a plan to modernize the Federal Housing Administration (FHA). This plan would allow FHA to reclaim its traditional role of providing a safe and affordable alternative for underserved communities within the housing market.

b. What results are anticipated from this expenditure of funds?

Through this project, three state FHAP agencies will develop model mortgage lending enforcement programs. The models will include successful education and outreach techniques, intake procedures, and investigation techniques. HUD will pass on the results so that other state and local FHAP agencies can replicate these programs.

c. Please describe the criteria for awarding the $900,000 to various FHAP agencies and provide any written information on the criteria and program.

HUD identified state FHAP agencies that had expertise and experience with lending discrimination cases and that were located in states with high foreclosure rates. These agencies submitted proposals that addressed the following:

- How will money be used to address mortgage discrimination and the discriminatory aspects of predatory lending under the Fair Housing Act or your state fair housing law? Please describe both enforcement and any education and outreach efforts that will be undertaken.
- What novel or pro-active methods is your agency currently using to address mortgage lending discrimination?
- How can the methodology for addressing mortgage lending discrimination be replicated at other State or local agencies?
- How much funding is necessary to carry forward your objectives? Please designate how much of this funding request is administrative costs vs. program costs.
- How you will be able to demonstrate measurable results of your project?

HUD awarded the funding to the organizations with the best methodology, experience, and capacity for a lending discrimination project that could be replicated by other FHAP agencies. HUD awarded approximately $300,000 to each of the following FHAP agencies to the Pennsylvania Human Relations Commission, the Ohio Civil Rights Commission, and the Colorado Civil Rights Division.

4. Please give details of HUD's new "Fair Lending Division" mentioned at pages 7-8 of your written testimony. Explain in detail the reasons it took HUD so long to create a specialized Fair Lending Division.

HUD decided to establish the Fair Lending Division because of three major changes in recent years. In FY2005, FHEO established the Office of Systemic Investigation to handle the investigation of large and systemic investigations filed under the Fair Housing Act. Previously, individual regional and field offices conducted these investigations. The creation of this Office provided FHEO with a central point to plan and coordinate systemic and secretary-initiated complaints.

Also, in 2005, for the first time HMDA data included provided pricing information, which made it possible for HUD to initiate investigations of discriminatory loan pricing against independent mortgage companies. In 2006, the Office of Systemic Investigations began HUD's first Secretary-initiated investigation based on the new pricing data and initiated two additional investigations this year. These unique investigations required more resources than the average fair housing investigation.

Around this same time, individuals and groups began filing more complaints alleging systemic discrimination by lenders. Previously, most lending complaints alleged discrimination by a lender against a specific individual; however, more of these complaints alleged that a lender's policies and practices discriminated against a class of individuals. These cases involved a large number of loans and covered a large geographic area (which often invoked the jurisdiction of multiple HUD regions and field offices). Because of the geographic scope of these complaints, the Office of Systemic Investigations took charge of these complaints, further expanding the Office's inventory of lending cases.

These systemic and Secretary-initiated investigations require more investigation and econometric analysis than individual complaints, and the Department hired an outside contractor to assist in the econometric analysis of the lending data. Still, the Department concluded that it needed in-house expertise to handle the growing number of systemic investigations, including the growing number of systemic investigations of lenders and insurance companies. For this reason, HUD created the new Fair Lending Division within the Office of Systemic Investigations.

This new Fair Lending Division will oversee and investigate complaints of systemic lending discrimination throughout the nation, in addition to handling the Department's responsibly to periodically review Fannie Mae and Freddie Mac for compliance with Federal Housing Enterprises Financial Safety and Soundness Act (FHEFSSA) and the Fair Housing Act. This Division will be staffed by fair lending specialists and ultimately, a number of economists.

In July 2007, HUD hired Dr. Scott Susin, a senior-level economist to work in the Fair Lending Division. Dr. Susin obtained his Ph.D. in economics from the University of California at Berkeley. He has authored or co-authored twenty publications addressing housing issues, including a 2003 publication, "Mortgage Interest Rates and Refinancing: Racial and Ethnic Patterns," and has received several awards and grants for his work in economics and housing.

The five open positions for fair lending specialists were initially advertised on July 6, 2007, with screening dates on July 27, 2007, August 17, 2007, and September 7, 2007. The advertisements for the positions are now closed, and the Office of Systemic Investigations is now interviewing applicants. The Department expects to fill all of these positions by the end of this fiscal year.

5. **Former HUD Secretary Cisneros stated at a Senate Banking, Housing and Urban Affairs Committee hearing in 1993 that HMDA data needs to be made accessible to fair housing organizations, community groups, foundations and others. Yet we continue to**

receive complaints that HMDA data should be more user-friendly, especially for community-based organizations. Describe in detail what HUD is doing to follow-through on its promise made in 1993 to address this problem?

HMDA data are available to any fair housing organization, community group, foundation or member of the public who requests it. The most complete HMDA data is available directly from the Federal Reserve Board. Any member of the public may contact the Federal Reserve Board to get a CD with all of the HMDA data on it. The researchers can then explore and analyze the data however they choose.

In addition, HUD and the member agencies in Federal Financial Institutions Examination Council (FFIEC) provide the data in a user-friendly form through the FFIEC web site (www.ffiec.gov). On this website, the public can generate reports that analyze the HMDA data. They can also obtain aggregate reports on mortgage lending information within an metropolitan area. In addition, they can access an individual lending institution's HMDA data or generate national reports.

Finally, if a community group would like a report on any HUD-filer, it simply needs to contact HUD's Office of Housing and it will generate a report for them. The Department receives about 60 such requests each year.

6. **Should the protected classes under the Fair Housing Act be consistent with the protected classes under the Equal Credit Opportunity Act?**

The Department has no position on this at this time, but HUD would be willing to review and provide comment on any proposal the committee might have.

7. **How many total cases has HUD brought under the Fair Housing Act over the last two years? Describe each in detail.**

Since FY 2005, HUD has received 365 lending discrimination complaints from individuals. This includes any case that alleged discriminatory financing or redlining. Attachment B contains details on each of these complaints, specifically, the date the case was filed, the name of the respondents, the location of the violation, the basis for the complaint, the violations alleged, the date of closure, and the outcome of the complaint.

8. **Should HUD contract with private fair housing organizations to conduct comprehensive mortgage lending testing programs?**

HUD provides grants to private fair housing organizations to conduct mortgage lending testing. In fact, the Fair Housing Center of Greater Boston (FHCGB), whose Executive Director testified at the Subcommittee's hearing on Rooting out Discrimination in Mortgage Lending on July 25, 2007, is a recipient of a $274,166 FHIP grant from HUD to conduct fair lending investigations. FHCGB also received FHIP grants in 2002, 2003, and 2004, 2005, and 2006, totaling $1.251 million. HUD's grants to the FHCGB fund the pre-application mortgage testing that FHCGB discussed in its July 25, 2007 testimony. In addition, in 1999, the National Fair Housing Alliance received a $300,000 FHIP grant, which it received over three years to create and establish FHCGB. Another HUD grantee, the Fair Housing Center of Greater New York, also conducts testing for mortgage lending discrimination. HUD provides FHIP grants to several other groups who focus on mortgage lending discrimination.

9. Would HUD support an exemption to allow mortgage lending testers to provide false information on loan applications facilitating testers' involvement beyond the pre-application phase of the mortgage lending process?

While this exemption would benefit HUD in its fair lending investigations, the Department would have to review the specific language of any such legislation before taking an official position on any legislative change.

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
000700028	12/29/2006	GuideOne Insurance	Polk County, IA	Religion	321 Discriminatory advertisement - sale 350 Discriminatory financing (includes real estate transactions) 430 Otherwise deny or make housing available		
000700038	01/04/2007	Accredited Home Lenders Holding Company Accredited Home Lenders, Inc. Accredited Mortgage Loan REIT Trust	Anne Arundel County, MD	Black or African American, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	08/07/2007	Complaint withdrawn by complainant without resolution
000700048	01/09/2007	American International Group, Inc. AIG Federal Savings Bank Wilmington Finance, Inc.	Anne Arundel County, MD	Black or African American, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)		
000700078	02/01/2007	Aegis Mortgage Corporation Aegis Wholesale Corporation Aegis Funding Corporation	Baltimore County, MD	Black or African American, Mental Disability, Physical Disability	351 Discrimination in the making of loans	07/02/2007	Complaint withdrawn by complainant after resolution
000700098	05/03/2007	Platinum Capital Group, Inc. PCG Financial, Inc.	Anne Arundel County, MD	Black or African American, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)		
000700108	06/06/2007	Franklin Bank Corp. Franklin Bank, SSB	Harris County, TX	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)		
000700118	06/06/2007	ComUnity Lending	Santa Clara County, CA	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)		

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
000700128	06/06/2007	Guaranteed Rate Guaranteed Rate	Cook County, IL	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)		
000700138	06/07/2007	Hyperion Capital Group, LLC	Clackamas County, OR	American Indian or Alaska Native, Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)	07/06/2007	Complaint withdrawn by complainant after resolution
010404448	09/17/2004	Vermont Development Credit Union Mark McClary Vermont Development Credit Union Cheryl Fatnassi Vermont Development Credit Union	Addison County, VT	National Origin (not Hispanic or Latino)	350 Discriminatory financing (includes real estate transactions)	03/29/2005	No cause determination
010500028	10/04/2004	Boston Mortgage Richard Shelton Boston Mortgage Bob LNU, Manager Boston Mortgage	Suffolk County, MA	Black or African American, Color, Hispanic or Latino	420 Redlining 422 Redlining - mortgage	12/21/2004	Complaint withdrawn by complainant without resolution
010601448	02/07/2006	Deutsche Bank National Trust Co.c/o Chase Home Finance	New Haven County, CT	Black or African American	352 Discrimination in the purchasing of loans	07/21/2006	No cause determination
010604398	07/28/2006	Alain Valles Direct Finance Corp. Claudia Cardoso, Loan Officer Direct Finance Corp.	Suffolk County, MA	Black or African American, Female, Color	350 Discriminatory financing (includes real estate transactions)	03/14/2007	Complaint withdrawn by complainant without resolution

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
010700188	10/19/2006	D. Sutton WMC Mortgage Corporation WMC Mortgage Corp., Head Quarters John Mesuri Mortgage Options of America Inc. Rosalie Rodriguez, Mortgage Broker Mortgage Options of America Inc. Chace HomeFinance LLC The Prudential Carlos Flores, Sales Associates The Prudential	Middlesex County, MA	Female, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	07/06/2007	Conciliation/settlement successful
010704948	08/07/2007	Washington Mutual Bank, FA Long Beach Mortgage Julieth Gallego, Broker Re-Max Sonia Escalante, Agent Re-Max GMAC Mortgage First Patriot Mortgage	Barnstable County, MA	Hispanic or Latino	352 Discrimination in the purchasing of loans		

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
010704958	08/07/2007	Accredited Home Lenders, Inc. Nancy C. Hughes, Agent Mortgage Electronic Registration Systems, Inc. (MERS) Mortgage Electronic Registration Systems, Inc. (MERS)	Berkshire County, MA	Hispanic or Latino	352 Discrimination in the purchasing of loans		
020401638	12/22/2003	Charter One Bank	New York County, NY	Female, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans		
020501868	01/04/2005	Maurice Jones Better Homes Depot, Inc. Showcase Express Homes, LLC Showcase Express Homes, LLC Best Express Homes Inc. Wall St. Mortgage Bankers Ltd. Wells Fargo Home Mortgage, Inc.	Kings County, NY	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	09/28/2006	Complaint withdrawn by complainant after resolution

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
020502008	01/10/2005	Tracy Peterson Affordable Housing Partnership Affordable Housing Partnership Freddie Conyers-Burns, IDA Program Manager Affordable Housing Partnership Susan Cotner Affordable Housing Partnership	Albany County, NY	American Indian or Alaska Native and Black or African American	350 Discriminatory financing (includes real estate transactions) 380 Discriminatory terms, conditions, privileges, or services and facilities 450 Discriminatory acts under Section 818 (coercion, Etc.)	04/20/2005	No cause determination
020502188	01/18/2005	Celia Joza ACORN Housing ACORN Housing/MAHNY Homeworks Program	Kings County, NY	Black or African American, National Origin (not Hispanic or Latino), Children under 18	302 Discriminatory refusal to sell and negotiate for sale 330 False denial or representation of availability 350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)	04/25/2005	No cause determination
020503048	03/02/2005	HomeAmerican Credit Inc., d/b/a/Upland Mortgage Southwest Capital Investments, LLC. ABFS Loan Processing Center Richard S. Mullen, Vice Pres., Customer Advocate Upland Mortgage	Nassau County, NY	White, Male, Mental Disability, Physical Disability	341 Blockbusting - sale 350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)	06/09/2005	No cause determination

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
020600548	10/25/2005	Angelo R. Mozilo, Chairman and CEO Countrywide Financial Corp. Dave Sambol, President Countrywide Financial Corp. Sandra Lopez, Executive Assistant Countrywide Financial Corporation Andrew Kohut, Esq. Dollinger & Ostrowski, LLC Aaron Gregg, Manager Full Spectrum Lending/Countrywide Financial Full Spectrum/Countrywide Financial Corp.	Middlesex County, NJ	Black or African American, Female, Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions) 360 Discriminatory brokerage service 450 Discriminatory acts under Section 818 (coercion, Etc.)		
020705088	06/04/2007	FEMBI Mortgage Green Island Realty	San Juan Municipios, PR	Physical Disability	350 Discriminatory financing (includes real estate transactions) 355 Discrimination in the brokering of residential real property	07/23/2007	Complaint withdrawn by complainant after resolution

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
020706888	08/02/2007	Departamento de Vivienda de Puerto Rico Rafael De Orbeta Departamento de Vivienda de Puerto Rico Magda Morales Departamento de Vivienda de Puerto Rico Dept. de Vivienda Puerto Rico - FEMA Nuevo Hogar Seguro Ing. Jorge Rivera Jimenez Dept. de Vivienda de P.R./Prog. FEMA Nuevo Hogar Seguro Sra. Lydia Barreto Dept. de Vivienda de P.R./Prog. FEMA Nuevo Hogar Seguro Daliz Nieves Martinez Dept. de Vivienda de P.R./Prog. FEMA Nuevo Hogar Seguro Reminio Gonzalez	Caguas Municipios, PR	White, Physical Disability	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)		

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
030601408	11/30/2005	Bridge Capital Corp. T. Sanford Bridge Capital Corporation Louis Shapiro Bridge Capital Mortgage Rebecca Saentz Bridge Capital Mortgage	Baltimore City, MD	Black or African American, Female	351 Discrimination in the making of loans	08/29/2006	Untimely filed
030603758	04/12/2006	Fieldstone Investment Corp. Fieldstone Mortgage Company	Baltimore City, MD	Black or African American, Hispanic or Latino	352 Discrimination in the purchasing of loans 353 Discrimination in the terms/conditions for making loans		
030603768	04/12/2006	Regions Financial Corp. Regions Bank Regions Mortgage EFC Holdings Corporation EquiFirst Corporation	Baltimore City, MD	Black or African American, Hispanic or Latino	353 Discrimination in the terms/conditions for making loans	09/07/2006	Complaint withdrawn by complainant after resolution
030603778	04/12/2006	Nova Star Financial Inc.	District of Columbia, DC	Black or African American	353 Discrimination in the terms/conditions for making loans	05/10/2007	Complaint withdrawn by complainant without resolution
030603788	04/12/2006	SouthStar Funding LLC	Baltimore City, MD	Black or African American	353 Discrimination in the terms/conditions for making loans	09/14/2006	Conciliation/settlement successful
030603798	04/12/2006	Gelt Financial Corporation Jack Miller Gelt Financial	Baltimore City, MD	Black or African American	353 Discrimination in the terms/conditions for making loans	05/25/2007	Complaint withdrawn by complainant without resolution

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
040500588	10/18/2004	Fabian Nancy Bank Consortium John J. Gascey (Realtor)	Charleston County, SC	Black or African American	353 Discrimination in the terms/conditions for making loans	04/27/2005	No cause determination
040500798	10/22/2004	Registered Agent Bay City South Mortgage Company Mr. Blake, Representative Bay City South Mortgage Company	Hinds County, MS	Black or African American	350 Discriminatory financing (includes real estate transactions)	06/15/2005	No cause determination
040500878	10/26/2004	President of the Bank World Savings Bank President of the Bank World Savings Bank	Hillsborough County, FL	Black or African American	353 Discrimination in the terms/conditions for making loans	01/20/2006	No cause determination
040501298	11/05/2004	Mayor Jerry Hinch	Cumberland County, TN	Male, Children under 18	353 Discrimination in the terms/conditions for making loans	08/31/2005	No cause determination
040501388	11/05/2004	Nathaniel Holloway (Appraiser) Holloway and Company	Durham County, NC	Black or African American	350 Discriminatory financing (includes real estate transactions)□ 351 Discrimination in the making of loans□ 356 Discrimination in the appraising of residential real property		
040501428	11/05/2004	Par-One Mortgage	Durham County, NC	Black or African American	353 Discrimination in the terms/conditions for making loans		
040502458	12/01/2004	Mid-State Homes, Inc. Jim Walter Homes, Inc. David Bickerstaff Mid-State	Baldwin County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)	08/31/2005	Complaint withdrawn by complainant after resolution

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
040503478	12/30/2004	Stephanie Steine, Housing Specialist Brighton Center, Inc. Mark DiNardo (Mortgage Loan Originator) Fifth Third Bank		Black or African American	350 Discriminatory financing (includes real estate transactions)	05/12/2006	Conciliation/settlement successful
040504588	01/24/2005	Ameriquest Mortgage Company	Jefferson County, AL	Black or African American	353 Discrimination in the terms/conditions for making loans	04/29/2005	Complaint withdrawn by complainant without resolution
040508628	05/03/2005	Kristy Smith Regions Mortgage Martha Wade Regions Mortgage	Madison County, AL	Black or African American	351 Discrimination in the making of loans		
040509688	05/19/2005	Matt Daniels, President/CEO First State Bank, Division of Clayton Bank & Trust Matt Daniels Clayton Bank & Trust, President/CEO	Madison County, TN	Black or African American, Mental Disability	350 Discriminatory financing (includes real estate transactions) 351 Discrimination in the making of loans 353 Discrimination in the terms/conditions for making loans 381 Discrimination in terms/conditions/privileges relating to sale 450 Discriminatory acts under Section 818 (coercion, Etc.)	09/16/2005	No cause determination
040509808	05/23/2005	Carl W. Ezell Ezell Real Estate Appraisal Service, Inc.	Madison County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)	02/15/2006	No cause determination
040510048	05/31/2005	Wells Fargo Bank, N.A. Option One Mortgage	Union County, SC	Black or African American	350 Discriminatory financing (includes real estate transactions)	09/19/2005	No cause determination

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
040510678	06/14/2005	Registered Agent Wells Fargo Home Mortgage, Inc. Debra Maye Wells Fargo Home Mortgage, Inc. Tammy McArn Wells Fargo Home Mortgage, Inc. Janette Massey Wells Fargo Home Mortgage, Inc.	Jefferson County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)	05/10/2006	No cause determination
040510958	06/21/2005	AmSouth Bank Rachelle Lucas (loan officer) AmSouth Bank Deanna Trippi , Vice President Business Banking AmSouth Bank Timothy Dorman	Davidson County, TN	Black or African American	350 Discriminatory financing (includes real estate transactions) 351 Discrimination in the making of loans	09/13/2005	No cause determination
040511198	06/24/2005	Matt Hollingsworth Select Portfolio Servicing Select Portfolio Servicing	Berkeley County, SC	Black or African American	350 Discriminatory financing (includes real estate transactions)		

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040512928	08/04/2005	Victor Miller, Broker The Condo Store - Coldwell Banker	Fulton County, GA	Black or African American	300 Discriminatory refusal to sell 331 False denial or representation of availability - sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale 410 Steering		
040514398	09/12/2005	Mike Daly GMAC Mortgage Corporation Ernie Davis, Associate Manager GMAC Mortgage Corporation	Jefferson County, AL	Black or African American	353 Discrimination in the terms/conditions for making loans 410 Steering		
040600128	10/04/2005	Robert Hooks Hooks Van Holm, Inc. Washington Mutual Bank Cheryl Berry Hooks Van Holm, Inc.	Mobile County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/08/2005	Complaint withdrawn by complainant without resolution
040600498	10/13/2005	James W. Derrick, Jr., President Century 21 Bob Capes Realtors Anne M. Bryant	Richland County, SC	Black or African American	300 Discriminatory refusal to sell 321 Discriminatory advertisement - sale 350 Discriminatory financing (includes real estate transactions)	12/01/2005	Conciliation/settlement successful

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
040600638	10/19/2005	Oasis Mortgage Lending Corporation c/o Richard Markussen, Registered Agent Debbie Day, Loan Processor Oasis Mortgage Lending Corporation	Pinellas County, FL	Black or African American	351 Discrimination in the making of loans	01/10/2006	No cause determination
040601528	11/15/2005	Claude Spurlock, Director of Loan Production S.C. State Housing Finance & Development Authority Andy Laurent, Director S.C. State Housing Authority	Richland County, SC	Black or African American	350 Discriminatory financing (includes real estate transactions)	04/24/2006	Conciliation/settlement successful
040601628	11/17/2005	Gary W. Moses, Vise President AM SouthBank	Orange County, FL	Black or African American, Mental Disability	353 Discrimination in the terms/conditions for making loans	05/11/2006	No cause determination
040604218	02/09/2006	Manuel Torres, Broker Action Financial Mortgage, Corp. Sandra Torres Juan Carlos Hernandez Action Financial Mortgage, Corp. Action Financial Mortgage, Corp. B & A Title Services Corporation	Dade County, FL	Black or African American, Mental Disability	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans 450 Discriminatory acts under Section 818 (coercion, Etc.)		

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
040604368	02/09/2006	Manuel Torres, Broker Action Financial Mortgage, Corp. Juan Carlos Action Financial Mortgage, Corp. Sandra V. Torres Action Financial Mortgage, Corp. B & A Title Services Corporation	Dade County, FL	Black or African American, Mental Disability	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans 450 Discriminatory acts under Section 818 (coercion, Etc.)		
040605228	03/10/2006	Renee Powell, Branch Manager New South Federal Savings bank Will Radcliffe, President New South Federal Savings Bank Lizabeth Reynolds New South Federal Savings Bank	Mobile County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)		
040607168	05/04/2006	Citi Financial Mortgage Company, Inc.	Montgomery County, AL	Black or African American	353 Discrimination in the terms/conditions for making loans		
040607988	05/22/2006	Tiffany McCoy, Registered Agent Mortgage Team 1, Inc. Bob Stanley Mortgage Team 1, Inc.	Mobile County, AL	Black or African American, Female, Mental Disability	350 Discriminatory financing (includes real estate transactions) 351 Discrimination in the making of loans	07/13/2006	Complaint withdrawn by complainant after resolution

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
040610028	06/26/2006	Jackie Bestrom, Mortgage Consultant JPMorgan Chase Bank Rena Chynoweth, Home Loan Analyst JPMorgan Chase Bank Kelly L. Wogan JP Morgan Chase Bank	Beaufort County, SC	Female	353 Discrimination in the terms/conditions for making loans	09/28/2006	Conciliation/settlement successful
040611868	08/04/2006	Steven Lind Rural Development Manager USDA Rural Development-Area Office	Montgomery County, KY	Pregnant Female	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	05/15/2007	No cause determination
040612398	08/18/2006	Donald Gallardo Litton Loan Servicing, Inc. President/ CEO Litton Loan Servicing, Inc.	Madison County, AL	Black or African American, National Origin (not Hispanic or Latino)	350 Discriminatory financing (includes real estate transactions)		
040612958	08/30/2006	Sheryl Waldorp, Branch Manager Bancorp South Bank Bancorp South Bank	Jefferson County, AL	Black or African American	353 Discrimination in the terms/conditions for making loans		

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040613268	09/06/2006	Ken Szortyka, Loan Officer Wachovia Mortgage Corporation Prentice-Hall Corp. System, Inc., Registered Agent Wachovia Mortgage Corporation Richard Z. Grimm Wachovia Mortgage Corporation	Leon County, FL	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/15/2006	Conciliation/settlement successful
040614348	09/27/2006	Central State Bank Donna Capps, Bank Representative Central Bank	Jefferson County, AL	Hispanic or Latino, National Origin (not Hispanic or Latino)	353 Discrimination in the terms/conditions for making loans	02/28/2007	No cause determination
040700228	10/05/2006	Regions Bank	Shelby County, TN	Black or African American	353 Discrimination in the terms/conditions for making loans 420 Redlining	12/04/2006	Conciliation/settlement successful

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040700878	10/23/2006	Robert Guide, Director HSBC Mortgage Services, Inc. Eric Higdon, Branch Manager HSBC Mortgage Services, Inc. Angel Perez, Loan Officer HSBC Mortgage Services, Inc. Registered Agent CT Corporation System Laura Minich HSBC Mortgage Services-Compliance Officer Shun Rockway HSBC Mortgage Services	Dale County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions) 351 Discrimination in the making of loans		
040701928	11/09/2006	Washington Mutual Bank Rochelle Herman Washington Mutual Bank-Vice President	Broward County, FL	Black or African American	350 Discriminatory financing (includes real estate transactions)		

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040702268	11/17/2006	Katherine, Broker The Hometown Mortgage Company LLC Scott E. Pilkington, Registered Agent The Hometown Mortgage Company LLC Jennifer Spooner, Registered Agent Hill Spooner & Company, Inc. Nrai Services, Inc., Registered Agent Lime Financial Services, Ltd	Leon County, FL	Black or African American, Children under 18	350 Discriminatory financing (includes real estate transactions)	04/04/2007	No cause determination
040702708	11/29/2006	Vanderbilt Mortgage & Finance, Inc. Kevin T. Clayton, Registered Agent Vanderbilt Mortgage & Finance, Inc. Lloyd Butler Vanderbilt Mortgage and Finance, Inc. Nakia Martin Vanderbilt Mortgage and Finance, Inc.	Walthall County, MS	Black or African American	350 Discriminatory financing (includes real estate transactions)		

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040702838	12/01/2006	Robert Stine Financial Freedom Senior Funding Corp James R. Mahoney, CEO Financial Freedom Senior Funding Corporation Registered Agent C T Corporation System	Jefferson County, AL	Black or African American	353 Discrimination in the terms/conditions for making loans	04/02/2007	No cause determination
040703258	12/07/2006	John Vella, President EMC Mortgage Corporation	McNairy County, TN	Religion	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	05/14/2007	Dismissed for lack of jurisdiction
040703878	12/19/2006	HSBC Mortgage Services Inc. et al.	Hamilton County, TN	Physical Disability	300 Discriminatory refusal to sell 350 Discriminatory financing (includes real estate transactions)	03/26/2007	Complaint withdrawn by complainant after resolution
040703888	12/19/2006	David Dill (CEO) Saxon Mortgage Services First Franklin Financial Corporation	Jefferson County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)		
040703968	12/20/2006	Mike Smith Smith & Patterson, Inc. Wayne Patterson Smith & Patterson, Inc.	Madison County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)		
040704058	11/15/2006	Candy Gray, Vice President Amtrust Bank	Broward County, FL	Black or African American, Female	353 Discrimination in the terms/conditions for making loans		

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040704648	01/10/2007	A. Bender (Lending Agent) Regions Mortgage, Inc. Robert A. Goethe (President) Regions Mortgage, Inc.	DeKalb County, GA	Mental Disability, Physical Disability	351 Discrimination in the making of loans		
040705818	01/05/2007	John Mabery, V. P. Mortgage Lending Queensboro National Bank Bill Easterlin, President Queensboro National Bank Sandra Glosser, Loan Officer Queensboro National Bank	Columbia County, GA	Black or African American	351 Discrimination in the making of loans		
040705868	02/01/2007	Burt Jordan Broker-In-Charge	Darlington County, SC	Black or African American, Children under 18	350 Discriminatory financing (includes real estate transactions)		
040706698	02/16/2007	Thomas Esposito, Realtor Coldwell Banker Deutsche Bank National Trust Company	Fulton County, GA	Black or African American, Female	331 False denial or representation of availability - sale 350 Discriminatory financing (includes real estate transactions) 354 Discrimination in the selling of residential real property		
040706918	02/22/2007	Rhett Taylor, Mayor The City of Abbeville Ben Pritchett Euwing & Connors Associates David Euwing Euwing & Connors Associate	Henry County, AL	American Indian or Alaska Native and Black or African American, Female, Physical Disability	350 Discriminatory financing (includes real estate transactions) 380 Discriminatory terms, conditions, privileges, or services and facilities		

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040707618	03/08/2007	Mike Graham Merchants & Farmers Bank	Union County, MS	Black or African American, Female	353 Discrimination in the terms/conditions for making loans		
040708458	03/27/2007	Joseph J. Levitt, Jr., Attorney Levitt Management, Inc.	Knox County, TN	Black or African American, Female, Religion	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale		
040708538	03/28/2007	Mike Stanton Bank of New Albany J A Smallwood (Incorporator) Bank of New Albany J T Baker (Incorporator) Bank of New Albany Sam D Owen (Incorporator) Bank of New Albany	Union County, MS	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)		
040709008	04/05/2007	Chris Young, Assistant VP South Carolina Bank and Trust Robert Hill, CEO South Carolina Bank and Trust A Loran Adams South Carolina Bank and Trust	Jasper County, SC	Black or African American, National Origin (not Hispanic or Latino)	350 Discriminatory financing (includes real estate transactions) 351 Discrimination in the making of loans	08/13/2007	Conciliation/settlement successful
040709168	04/11/2007	Earle Moore, Sycamore Bank	Tallahatchie County, MS	Black or African American	353 Discrimination in the terms/conditions for making loans		

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040709708	04/23/2007	Dick Chittam, Owner Chittam & Collier Realty Phil Collier, Agent Chettam & Collier Realty	Limestone County, AL	Physical Disability	300 Discriminatory refusal to sell□ 331 False denial or representation of availability - sale□ 353 Discrimination in the terms/conditions for making loans□ 360 Discriminatory brokerage service□ 450 Discriminatory acts under Section 818 (coercion, Etc.)		
040709718	04/23/2007	Clayton Homes, Inc. CMH Manufacturing, Inc. Vanderbilt Finance Pete Lamb, Manager Clayton Homes, Inc.	Limestone County, AL	Physical Disability	350 Discriminatory financing (includes real estate transactions)		
040711168	06/01/2007	Mark Amato H & R Block Laurie Gallo H & R Block	Madison County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)		
040711408	06/05/2007	Jenemarie Deloatch USDA Rural Development Ricky Sweat, Area Director USDA Rural Development, Area VI	Chatham County, GA	Black or African American, Female	351 Discrimination in the making of loans□ 450 Discriminatory acts under Section 818 (coercion, Etc.)	07/17/2007	Complaint withdrawn by complainant after resolution

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040711928	06/20/2007	Shreen Kelsh Citifinancial Mortgage Robin Stewart Citifinancial Mortgage Ivy Magloom Citifinancial Mortgage Kim Blevins Citifinancial Mortgage	Jefferson County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)		

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050410748	07/14/2004	Richard Dawson Lia Dawson Thomas Brasitus Homebuyer Associates Mark D. Sells M.D.S. Appraisal Services Stephen Fielsdorf First Capital Financial DBA Full Compass Lending Kim A. Diaz Meridian Title Corporation Meridan Title Corporation Richard Metts MSC Financial Group, Inc. Brandi Allen-Shotwell MSC Financial Group & First Capital Financial Services	Lake County, IN	Black or African American	353 Discrimination in the terms/conditions for making loans 354 Discrimination in the selling of residential real property 355 Discrimination in the brokering of residential real property 356 Discrimination in the appraising of residential real property 381 Discrimination in terms/conditions/privileges relating to sale	09/19/2005	Complaint withdrawn by complainant without resolution
050414508	09/30/2004	K.C. Bickel, Branch Manager Citi Financial Tina Draper, Service Representative Citifinancial	Genesee County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)	01/10/2005	Complaint withdrawn by complainant without resolution

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050501048	10/23/2004	Dan Sampson, Loan Officer AAA Mortgage Exchange (Indus Mortgage) Mohan Panangavil, President AAA Mortgage Exchange (Indus Mortgage) David Daberco, CEO National City Bank Anett Kirkpatrick, Corporate Fair Lending Off National City Bank	Macomb County, MI	Physical Disability	353 Discrimination in the terms/conditions for making loans	12/09/2005	No cause determination
050501958	12/06/2004	Interstate Bank	Cook County, IL	Black or African American	420 Redlining	04/12/2006	No cause determination
050501968	12/06/2004	Interstate Bank	Cook County, IL	American Indian or Alaska Native	420 Redlining	04/12/2006	No cause determination
050502798	12/21/2004	Ray Haddad Home Loan Mortgage Corporation Michael Daniels Home Loan Mortgage Corporation Craig Kelleher Home Loan Mortgage Corporation	Lake County, IN	National Origin (not Hispanic or Latino)	350 Discriminatory financing (includes real estate transactions)	05/09/2005	No cause determination
050503838	01/28/2005	David Garcia, Mortgage Company Owner Tri-State Mortgage	Racine County, WI	Black or African American and White	350 Discriminatory financing (includes real estate transactions)	03/30/2005	Conciliation/settlement successful
050503878	01/28/2005	Ed Malacara More Holmes Realtor	Racine County, WI	Black or African American and White	350 Discriminatory financing (includes real estate transactions)	03/30/2005	Conciliation/settlement successful
050504768	02/10/2005	Mark McCartin Birmingham Bancorp	Wayne County, MI	Black or African American	351 Discrimination in the making of loans	08/22/2005	No cause determination

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050507158	04/05/2005	Isiah Shafir Aetna Mortgage	Oakland County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)	10/27/2006	Dismissed for lack of jurisdiction
050507168	04/05/2005	Justin Petrusson Mortgage Elite Incorporated	Ramsey County, MN	Black or African American, Female, Physical Disability	350 Discriminatory financing (includes real estate transactions)	02/22/2007	Complaint withdrawn by complainant after resolution
050507198	04/05/2005	Billy Horn Savage Mortgage Services, Limited Randall Dixon, Esquire Dixon and Hayes, Limited	Lucas County, OH	National Origin (not Hispanic or Latino)	350 Discriminatory financing (includes real estate transactions)	07/20/2005	No cause determination
050507628	04/13/2005	Dru Bergman, Agent DuPage Homeownership Center Jo Albert, Agent DuPage Homeownership Center	DuPage County, IL	White, Male, Physical Disability	324 Failure to comply with advertising guidelines□ 350 Discriminatory financing (includes real estate transactions)	08/04/2005	No cause determination
050507958	12/06/2004	First Franklin Financial Corporation National City Bank of Indiana National City Corporation	Cook County, IL	Black or African American	420 Redlining	07/21/2006	Complaint withdrawn by complainant after resolution
050507968	12/06/2004	First Franklin Financial Corporation National City Bank of Indiana National City Corporation	Cook County, IL	Black or African American	420 Redlining	07/21/2006	Complaint withdrawn by complainant after resolution
050508418	05/04/2005	Steve Clark Ocwen Financial Corporation Finance America	St. Joseph County, IN	Black or African American	350 Discriminatory financing (includes real estate transactions)	07/11/2005	Complaint withdrawn by complainant without resolution

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050509158	05/24/2005	Brenda Granica, Manager Wells Fargo Bank Janet Taylor former Wells Fargo employee Wells Fargo Ladysmith branch	Rusk County, WI	White, Female, Physical Disability	353 Discrimination in the terms/conditions for making loans□ 381 Discrimination in terms/conditions/privileges relating to sale	12/08/2005	No cause determination
050509268	05/26/2005	Mariann Adamski City of Racine Housing Department	Racine County, WI	Black or African American	350 Discriminatory financing (includes real estate transactions)	09/22/2005	No cause determination
050509528	06/01/2005	Chuck Jaqua Jaqua Realtors Theresa Page Jaqua Realtors	Kalamazoo County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/30/2005	No cause determination
050509978	06/08/2005	Buddy Buchanan Charter Funding Rick Freeze Charter Funding Jennifer Peterson Charter Funding Primary Residential Mortgage	Racine County, WI	Black or African American	350 Discriminatory financing (includes real estate transactions)	01/27/2006	Conciliation/settlement successful
050509988	06/08/2005	First Franklin Financial Corporation	Racine County, WI	Black or African American	350 Discriminatory financing (includes real estate transactions)	11/16/2005	Conciliation/settlement successful

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
050510048	06/01/2005	Lia Dawson Ameriquest Mortgage Company Christopher Wyatt Litton Loan Servicing LP Argent Mortgage Company, LLC Argent Mortgage Company, LLC Brandi Allen, Broker Quality Service Mortgage, Incorporated Richard Dawson, President Homeland Acquisition, Incorporated First American Title and Insurance Company	Lake County, IN	Black or African American	350 Discriminatory financing (includes real estate transactions)	09/19/2005	Complaint withdrawn by complainant without resolution
050510238	06/13/2005	Brian Nelson Mortgages Unlimited Jim Engel Re-Max Realty 100	Ramsey County, MN	Female	350 Discriminatory financing (includes real estate transactions)	08/24/2005	Complaint withdrawn by complainant after resolution
050510838	06/20/2005	Helyn Thompkins Prudential Preferred Realty	Kalamazoo County, MI	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	12/23/2005	No cause determination
050510848	06/20/2005	James Cottier Tala Real Estate	Berrien County, MI	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	12/23/2005	No cause determination
050510858	06/20/2005	Joann Bravata Bravata, Inc.	Kalamazoo County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/23/2005	No cause determination

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
050510868	06/20/2005	John Buttery Jaqua Realtors James Hess Jaqua Realtors	Kalamazoo County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/30/2005	No cause determination
050510878	06/20/2005	John Buttery Jaqua Realtors	Kalamazoo County, MI	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	01/06/2006	No cause determination
050510888	06/20/2005	John Buttery Jaqua Realtors	Kalamazoo County, MI	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	12/30/2005	No cause determination
050510898	06/20/2005	Sandy Jurich Buyer's Choice Realty	Kalamazoo County, MI	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	12/23/2005	No cause determination
050510908	06/20/2005	Sandy Jurich Buyer's Choice Realty	Kalamazoo County, MI	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	12/23/2005	No cause determination
050512028	06/30/2005	Teresa Page Jacqua Realty	Kalamazoo County, MI	Black or African American, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)	12/14/2005	Unable to locate complainant
050512178	07/07/2005	First Horizon Home Loan Corporation	Cook County, IL	Black or African American	350 Discriminatory financing (includes real estate transactions)	10/13/2005	Untimely filed
050513678	08/05/2005	James Buttery Jaqua Real Estate Alicia White Jaqua Real Estate Compamy	Kalamazoo County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/30/2005	No cause determination
050513878	05/24/2005	Micki Brodie ReMax	Kalamazoo County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)	12/23/2005	No cause determination
050513888	08/09/2005	John Buttery Jaqua Realtors Mimi Asepha Jaqua Realtors	Kalamazoo County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/30/2005	No cause determination
050515558	09/14/2005	Bryant Holloway, Mortgage Lender Tri-State Mortgage	Racine County, WI	Female	350 Discriminatory financing (includes real estate transactions)	10/20/2005	Complaint withdrawn by complainant without resolution

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050515928	09/22/2005	John Peter, Borker Provinet Mortgage Corporation	Dakota County, MN	Female	351 Discrimination in the making of loans	12/23/2005	Complaint withdrawn by complainant without resolution
050600568	10/14/2005	Matt Bishop, Broker/Agent Option One, & Union Equity Corporation	Morrison County, MN	Female, Mental Disability	350 Discriminatory financing (includes real estate transactions)	01/20/2007	Dismissed for lack of jurisdiction
050600608	10/14/2005	Chi Xa Yia Xiong May Pa Lee Houly Xiong Americasian Realty Pang Vang Complete Mortgage Ben Aurich Total Title LLC Kevin Walsh Walsh Professional Home Inspections, Inc.	Hennepin County, MN	Female	350 Discriminatory financing (includes real estate transactions)	03/31/2006	No cause determination
050600828	10/17/2005	Mr. Ira Tangy GMAC Mortgage Company	Cook County, IL	Black or African American	350 Discriminatory financing (includes real estate transactions)	06/20/2006	Complaint withdrawn by complainant without resolution
050600918	10/17/2005	Tony Dagostino, President Commercial Mortgage Finance	Winnebago County, IL	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/20/2005	No cause determination
050601018	10/21/2005	ABN AMRO Mortgage Group, Inc. LNB Home Lending Center	Cook County, IL	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	10/09/2006	Complainant failed to cooperate
050601268	10/27/2005	Leigh Spielman First American Bank	Cook County, IL	Black or African American	353 Discrimination in the terms/conditions for making loans	11/14/2005	Complaint withdrawn by complainant after resolution

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050602038	11/03/2005	Ed Miles, President Northview Mortgage, LLC Steve Bollman Northview Mortgage, LLC	Lake County, IL	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	03/30/2007	Complaint withdrawn by complainant without resolution
050602758	11/29/2005	Steve Otella, President Washington Mutual Bank, FA Angie Lopez Washington Mutual, Home Loans	Cook County, IL	Black or African American	350 Discriminatory financing (includes real estate transactions)	07/31/2006	No cause determination
050602988	01/20/2006	John Kalas, Chief Compliance Officer American Home Mortgage	Cook County, IL	Black or African American	350 Discriminatory financing (includes real estate transactions)	08/13/2007	Dismissed for lack of jurisdiction
050603018	01/20/2006	Sheryl D. Azlin, Compliance Manager People's Choice Home Loans, Inc.	Cook County, IL	Black or African American	350 Discriminatory financing (includes real estate transactions)	08/13/2007	Dismissed for lack of jurisdiction
050603078	12/09/2005	American Banc Financial	Cook County, IL	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	03/31/2006	No cause determination
050603218	11/23/2005	Select Portfolio Servicing Bank of New York Bank of America	Allen County, IN	Black or African American	350 Discriminatory financing (includes real estate transactions)	09/07/2006	Dismissed for lack of jurisdiction
050603878	12/28/2005	Guaranteed Rate, Inc. a National Home Services, Inc. c/o Ioana Salajanu	Cook County, IL	Black or African American, Female	350 Discriminatory financing (includes real estate transactions) 440 Other discriminatory acts	07/14/2006	Dismissed for lack of jurisdiction
050603908	12/29/2005	Lloyd Levin, President Robbins and Lloyd Residential Mortgage Robbins & Lloyd Residential Mortgage	Milwaukee County, WI	Black or African American	350 Discriminatory financing (includes real estate transactions)	03/31/2006	No cause determination

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050604178	01/12/2006	David Frigerio, President Complete Mortgage Solutions	Wayne County, MI	Black or African American	353 Discrimination in the terms/conditions for making loans	05/19/2006	Complainant failed to cooperate
050604948	01/30/2006	TCF Bank	Milwaukee County, WI	Black or African American	350 Discriminatory financing (includes real estate transactions)	07/03/2006	No cause determination
050606938	03/03/2006	Joyce Davis Charter Funding	Milwaukee County, WI	Black or African American	353 Discrimination in the terms/conditions for making loans	06/06/2006	Complaint withdrawn by complainant after resolution
050612378	05/25/2006	Thomas Nelson, President First Wisconsin Financial Mortgage Chad Buchaklian First Wisconsin Financial Mortgage	Racine County, WI	Black or African American	350 Discriminatory financing (includes real estate transactions)	03/07/2007	No cause determination
050613068	06/07/2006	Daryl Web Money Tree	Allen County, IN	Black or African American	351 Discrimination in the making of loans	09/07/2006	Dismissed for lack of jurisdiction
050613208	06/13/2006	Shayna Friedman Countrywide Home Loans	Oakland County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)		
050614008	06/28/2006	Michael J. Daly, Vice-President GMAC Residential Craig Stewart, District Manager GMAC Ira Tensley, Agent GMAC Mortgage Company	Cook County, IL	Black or African American	353 Discrimination in the terms/conditions for making loans	08/26/2006	Conciliation/settlement successful
050615438	07/12/2006	Homecomings Financial Network	St. Joseph County, IN	Black or African American	350 Discriminatory financing (includes real estate transactions)□ 380 Discriminatory terms, conditions, privileges, or services and facilities	10/31/2006	Conciliation/settlement successful

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050616568	08/01/2006	Brian Raven, Office Manager American Realty Group, LLC Joel K. Johnson Registered Agent Fairhaven Properties, LLC James Adams Edina Realty-Chippewa Valley Office	Dunn County, WI	Female	350 Discriminatory financing (includes real estate transactions)	01/17/2007	Complaint withdrawn by complainant after resolution
050617338	08/04/2006	Terry Johnson, Consumer Credit Manager CitiBank CITIMORTGAGE Inc	Cook County, IL	Black or African American	350 Discriminatory financing (includes real estate transactions)		
050701418	10/31/2006	Leslie O'Day Sydney TCF Bank Michigan Mike Mankwanian Sydney TCF Bank Michigan Melonie Lachance Sydney TCF Bank Michigan	Allegan County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)		
050701868	11/13/2006	Homeowners Financial Services Choice One Mortgage	Adams County, WI	Mental Disability	351 Discrimination in the making of loans	05/11/2007	No cause determination
050702678	12/05/2006	Shawn Taylor Shoreline Mortgage Steve Schuitema Nexes Realty, Inc.	Muskegon County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)	03/15/2007	No cause determination

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050702788	12/06/2006	Robert Miller First Wisconsin Mortgage, Inc Philip I. Rolfe Registered Agent	Dane County, WI	Physical Disability	350 Discriminatory financing (includes real estate transactions)	05/11/2007	No cause determination
050702988	12/12/2006	Roseanne Klingelhofer MidAmerica Bank, FSB	Cook County, IL	Black or African American	351 Discrimination in the making of loans		
050703118	12/18/2006	Chris Hacker Source Lending Corp. Countrywide Home Loans	Hennepin County, MN	Female, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)		
050705668	02/27/2007	Michael Winkleman American National Mortgage Kim Lewis, Closing Agent Midwest Guaranty Title Company	Dakota County, MN	Black or African American	350 Discriminatory financing (includes real estate transactions) 380 Discriminatory terms, conditions, privileges, or services and facilities		
050705838	03/02/2007	Robert H. Warrington, President First Indiana Bank, National Association	Marion County, IN	Black or African American	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale 420 Redlining	05/03/2007	Conciliation/settlement successful
050706658	02/27/2007	Steven Snelling, President Midwest Guaranty Title Company Kim Lewis, Closing Agent Midwest Guaranty Title Company	Dakota County, MN	Black or African American	350 Discriminatory financing (includes real estate transactions) 380 Discriminatory terms, conditions, privileges, or services and facilities		

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050707528	04/13/2007	Wells Fargo Americas Servicing Co. Premier Asset Services	Wayne County, MI	Black or African American and White	350 Discriminatory financing (includes real estate transactions) 356 Discrimination in the appraising of residential real property		
050708398	04/30/2007	Wells Fargo and Company Americas Servicing Company Premier Asset Services	Wayne County, MI	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)		
050713028	07/25/2007	Paul Williams, President Homecoming Financial	Cleveland County, NC	Black or African American	350 Discriminatory financing (includes real estate transactions)		
050713038	07/25/2007	Robert Simpson, CEO Aurora Loan Services, Inc. Jason Rupp Aurora Loan Services, Inc.	Craven County, NC	Black or African American	350 Discriminatory financing (includes real estate transactions)		
050713168	07/27/2007	Cameron Williams, President/CEO Equity One, Inc	Dare County, NC	Black or African American	350 Discriminatory financing (includes real estate transactions)		
060500498	10/14/2004	Anibal Silva Janet Silva, Owner Azteca Marketing	Travis County, TX	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale 450 Discriminatory acts under Section 818 (coercion, Etc.)	07/12/2005	Charged

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060500508	10/14/2004	Annibal & Janet Silva	Travis County, TX	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale 450 Discriminatory acts under Section 818 (coercion, Etc.)	07/12/2005	Charged
060501198	10/28/2004	Connie Rogers, Director of Operations Household Mortgage Services	Pulaski County, AR	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	02/04/2005	Complaint withdrawn by complainant after resolution
060501748	11/17/2004	Wells Fargo Home Mortgage Wells Fargo Bank N.A.	Phillips County, AR	Black or African American	350 Discriminatory financing (includes real estate transactions)	04/01/2005	No cause determination
060505768	03/07/2005	Jeffrey Waite, President Customer Service Citifinancial Mortgage	Izard County, AR	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans	11/28/2006	Conciliation/settlement successful
060506108	03/16/2005	Annette Picard Morequity James Stevens, Morequity	Pulaski County, AR	Black or African American	350 Discriminatory financing (includes real estate transactions)	11/21/2006	No cause determination
060507218	04/14/2005	Rick Eledge, Agent Red Mortgage Company	Tarrant County, TX	Black or African American	353 Discrimination in the terms/conditions for making loans	11/03/2005	No cause determination
060507328	04/18/2005	Weldon C. Rainey, Community Development Specialist United States Dept. of Agriculture	Bexar County, TX	White, Physical Disability, Children under 18	350 Discriminatory financing (includes real estate transactions)	06/28/2005	Complainant failed to cooperate

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060507598	04/26/2005	City of Grand Prairie Mayor Charles England City of Grand Prairie Tom Hart, City Manager City of Grand Prairie Tom Cox, Asst. City Manager City of Grand Prairie	Tarrant County, TX	Black or African American, Hispanic or Latino, Mental Disability, Physical Disability, Children under 18	353 Discrimination in the terms/conditions for making loans 380 Discriminatory terms, conditions, privileges, or services and facilities 420 Redlining 430 Otherwise deny or make housing available 442 Restriction of choices relative to a rental 450 Discriminatory acts under Section 818 (coercion, Etc.) 460 Using ordinances to discriminate in zoning and land use		
060508358	05/17/2005	Athena Johnson Saxon Mortgage Company	Dona Ana County, NM	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 380 Discriminatory terms, conditions, privileges, or services and facilities	07/15/2005	No cause determination
060508548	05/23/2005	Brian E. Schaefer, Sr Loan Consultant E-Loan	Pulaski County, AR	Black or African American, Physical Disability	350 Discriminatory financing (includes real estate transactions)	10/20/2005	Complaint withdrawn by complainant without resolution
060508688	05/25/2005	Wenny Shaver, Escrow Closing Agent Beach Abstract Title Company	Pulaski County, AR	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	01/03/2006	No cause determination
060509128	06/08/2005	Linda Ritchie, Loan Officer Regions Bank Ruth Smith Regions Bank, Compliance Officer	Union County, AR	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	11/15/2005	No cause determination

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38	06/08/2005	Corey O. Young Single Family Housing Specialist Michael B. Taylor Director	Lafourche Parish, LA	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)	07/09/2007	Dismissed for lack of jurisdiction
78	06/27/2005	Karen Grgurich Loan Officer Terri Coffman Mortgage Representative	Bernalillo County, NM	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	09/26/2005	Conciliation/settlement successful
48	07/26/2005	Art Carroll The Carroll Mortgage Group	Pulaski County, AR	Black or African American, Female	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans 381 Discrimination in terms/conditions/privileges relating to sale	08/28/2006	No cause determination
58	08/02/2005	Randy M. Smith, President Randolph-Brook Federal Credit Union Mrs. Pool, Mortgage Loan Officer Randolph-Brook Federal Credit Union	Bexar County, TX	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	10/28/2005	Complaint withdrawn by complainant after resolution

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060511988	08/22/2005	Brad Jolly, Loan Officer Community Trust Bank Peggy (CRCM) Hemphill, V. Pres. & Compliance Officer Community Trust Bank Cary S. Davis, Vice President/Chief Risk Officer Community Trust Bank	Ouachita Parish, LA	Black or African American, Male	350 Discriminatory financing (includes real estate transactions)□ 351 Discrimination in the making of loans□ 353 Discrimination in the terms/conditions for making loans	01/29/2007	No cause determination
060512458	09/02/2005	Chief Executive Officer Washington Mutual Chief Executive Director Washington Mutual, Inc. Victory Grimn, Loss Mitigation Washington Mutual Jed Sonstroem Washington Mutual	Fort Bend County, TX	Black or African American	350 Discriminatory financing (includes real estate transactions)□ 381 Discrimination in terms/conditions/privileges relating to sale□ 450 Discriminatory acts under Section 818 (coercion, Etc.)	11/22/2005	Conciliation/settlement successful
060513308	09/21/2005	Washington Mutual Bank (Homeside Lending) Washington Mutual Bank	Tarrant County, TX	Black or African American, Female, Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)	12/13/2005	No cause determination
060600448	10/13/2005	Lisa Kelley USDA	Jim Wells County, TX		353 Discrimination in the terms/conditions for making loans	03/01/2007	Dismissed for lack of jurisdiction
060601278	11/07/2005	Bonita Davidson, Specialist USDA	Tyler County, TX	Black or African American, Physical Disability	353 Discrimination in the terms/conditions for making loans	07/27/2006	Complaint withdrawn by complainant without resolution

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060601958	11/23/2005	Maria Cantu Bank of America Lela Ashford Bank of America	Harris County, TX	Black or African American	350 Discriminatory financing (includes real estate transactions) 351 Discrimination in the making of loans 353 Discrimination in the terms/conditions for making loans	05/23/2006	No cause determination
060602438	12/13/2005	Jackie Shamblin, Asst. Vice President 1st National Bank of Sallisaw	Sequoyah County, OK	American Indian or Alaska Native	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 410 Steering	08/07/2006	No cause determination
060602578	12/19/2005	Debbie Wormack, Loan Officer Hibernia Bank Brad Burdette Capital One, , Mortgage Administration Manager	Morehouse Parish, LA	Black or African American	350 Discriminatory financing (includes real estate transactions)	05/21/2007	No cause determination
060602588	12/19/2005	Glenn Taylor, Loan Officer First United Bank Drake Mills, President Community Trust Bank	Union Parish, LA	Color	350 Discriminatory financing (includes real estate transactions)	12/13/2006	No cause determination
060602688	12/20/2005	Demecia Csanyi Real Estate Broker	Bernalillo County, NM	Physical Disability	353 Discrimination in the terms/conditions for making loans	03/28/2006	No cause determination
060602738	12/21/2005	Judy Jones, Work Director Wells Fargo	Harris County, TX	Black or African American	350 Discriminatory financing (includes real estate transactions)	03/01/2006	No cause determination
060602758	12/21/2005	Diana Ruiz	Cameron County, TX	Children under 18	353 Discrimination in the terms/conditions for making loans 381 Discrimination in terms/conditions/privileges relating to sale	05/02/2006	Complaint withdrawn by complainant after resolution

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060602818	12/22/2005	Wanda Holmes, Specialist USDA	Livingston Parish, LA	White	351 Discrimination in the making of loans 353 Discrimination in the terms/conditions for making loans	09/28/2006	Dismissed for lack of jurisdiction
060603058	12/29/2005	Ruth Rorie, Agent First Realty Group Inc. Cheryl Racine Weichert Relocation Resource Inc.	Columbia County, AR	Black or African American	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions)	06/06/2006	Conciliation/settlement successful
060603738	01/23/2006	Patricia Hartis Colonial National Mortgage Company James E. Dubose, Managing Officer Colonial Savings, FA Cathy Saunders Colonial National Mortgage Company	San Augustine County, TX	Black or African American	301 Discriminatory refusal to negotiate for sale 350 Discriminatory financing (includes real estate transactions) 351 Discrimination in the making of loans 353 Discrimination in the terms/conditions for making loans 354 Discrimination in the selling of residential real property 355 Discrimination in the brokering of residential real property	12/21/2006	No cause determination

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060603978	01/30/2006	Fernando Flores, CD Coordinator City of Pharr, Community Development Rene Saenz City of Pharr, Community Development Hilda Pedraza, CD Program Manager City of Pharr, Community Development Santiago Salinas, CD Program Monitor City of Pharr, Community Development City of Pharr	Hidalgo County, TX	Hispanic or Latino	351 Discrimination in the making of loans 380 Discriminatory terms, conditions, privileges, or services and facilities	05/10/2006	Complaint withdrawn by complainant after resolution
060604638	02/10/2006	State Farm Bank Marty Melton, Agent State Farm Insurance	Tarrant County, TX	White	351 Discrimination in the making of loans	05/18/2006	Complainant failed to cooperate
060604918	02/21/2006	Debbie Phillips Bollinger Real Estate Brian Bollinger Bollinger Real Estate	Tom Green County, TX	Black or African American	350 Discriminatory financing (includes real estate transactions)	08/21/2006	No cause determination

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060605448	03/07/2006	Christy Shearer, Loan Officer Midstate Mortgage Services, L.L.C. Mark Luker, Loan Officer Midstate Mortgage Services, L.L.C.	Grant County, AR	Black or African American	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans	05/18/2006	No cause determination
060605488	03/08/2006	John Micheal Davis, Loan Officer LMI Funding, Inc. William L. Holden, CEO, Director LMI Funding, Inc Joseph A Molkeen, Vice President, Director LMI Funding Inc Kelly D Parker, CFO, Director LMI Funding, Inc. Registered Agent Bridgespan Mortgage Corp Registered Agent LMI Funding, Inc. Ginger Davis	Denton County, TX	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)		

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060606648	03/31/2006	Tom Chapman, Owner Benchmark Homes Mike Bufler, Owner Benchmark Homes Edgar Olivas, General Manager Benchmark Homes	Guadalupe County, TX	Black or African American	350 Discriminatory financing (includes real estate transactions)□ 383 Discrimination in services and facilities relating to sale	07/06/2006	No cause determination
060607238	04/14/2006	Kody Nyburg Wells Fargo Home Mortgage Mike Mayne, Supervisor Wells Fargo Home Mortgage Mike Lei, Mortgage Consultant Wells Fargo Home Mortgage c/o Richard Kovacevich, Chairman Wells Fargo & Company	Dallas County, TX	Asian, National Origin (not Hispanic or Latino)	351 Discrimination in the making of loans	05/14/2007	No cause determination
060607438	04/19/2006	Steve Sheldon Senior Loan Officer Marshall G. Martin Executive Vice President Corporate Counsel for	Torrance County, NM	Mental Disability, Physical Disability	353 Discrimination in the terms/conditions for making loans	10/06/2006	No cause determination

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
060608058	05/02/2006	Blair Petrie, Loan Manager Homecomings Financial - GMAC CT Corporation Systems, Registered Agent for Jim Forehand Homecomings Financial Christopher T. Gilson, President INFORMATION ONLY Shawn Howey Homecomings Financial - GMAC Adam Algood Homecomings Financial _ GMAC Kevin Gray Homecomings Financial - GMAC Kathy Dixon Homecomings Financial - GMAC	Dallas County, TX	Black or African American	350 Discriminatory financing (includes real estate transactions) 351 Discrimination in the making of loans 353 Discrimination in the terms/conditions for making loans	06/06/2007	Conciliation/settlement successful

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
060608098	05/03/2006	Patricia Carrillo Branch Manager Jill Zeigler Loan Officer Phyllis Salazar Loan Processor Scott Grady Owner Scott Grady Owner	Bernalillo County, NM	Black or African American, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	08/07/2006	Complaint withdrawn by complainant after resolution
060609918	06/29/2006	Lisa Kelley USDA-Rural Housing Service Todd Powell USDA-Rural Housing Service	Bee County, TX	Other Multi-Racial Combination, Hispanic or Latino, Physical Disability	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans	11/29/2006	Dismissed for lack of jurisdiction
060610458	07/14/2006	Rick Misemer Listing Agent Bob Bury Prudential Kansas City Realty Prudential Kansas City Realty - Corporate Office	Johnson County, KS	Black or African American and White	350 Discriminatory financing (includes real estate transactions)	10/20/2006	No cause determination
060612548	09/01/2006	Ross Mcllwain Jacque' Jensen Director of Business Development Michael L. Mallow Agent for Service of Process	Taos County, NM	Hispanic or Latino	351 Discrimination in the making of loans 353 Discrimination in the terms/conditions for making loans	01/09/2007	No cause determination

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
060701358	10/31/2006	US Bank Consumer Finance Christy South, Loan Officer US Bank Consumer Finance Steve Maley, HEAR Sales Manager US Bank Consumer Finance	Pulaski County, AR	Black or African American	351 Discrimination in the making of loans	05/29/2007	Conciliation/settlement successful
060701828	11/14/2006	Antonio Cabballero American Finance Mortgage Services Mark Wolfe Remax DFW Associates II	Tarrant County, TX	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale		
060701858	11/14/2006	Gentry Tomlinson, Mortgage Lender Regions Bank	White County, AR	Black or African American	353 Discrimination in the terms/conditions for making loans	02/16/2007	No cause determination
060702838	12/20/2006	Jim Whitley, Manager Union Equity Corp	Pulaski County, AR	Black or African American	350 Discriminatory financing (includes real estate transactions)	02/16/2007	Complaint withdrawn by complainant after resolution
060703238	12/29/2006	George E. Turner USDA	St. Francis County, AR	Black or African American	351 Discrimination in the making of loans 353 Discrimination in the terms/conditions for making loans	04/07/2007	Dismissed for lack of jurisdiction
060704058	01/26/2007	Norice Claude, Real Estate Broker Thanh Nguyen, Salesperson Luang T. Le, Owner Allen Craig, Attorney	Bexar County, TX	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	03/15/2007	Complaint withdrawn by complainant after resolution

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
060706438	04/04/2007	Jose Antonio Caballero, Owner American International & Finance Inc.	Dallas County, TX	Hispanic or Latino	353 Discrimination in the terms/conditions for making loans	07/24/2007	Conciliation/settlement successful
060707188	04/26/2007	Rico Rinco, Mortgage Professional Financial Concepts Mortgage Kurt Swink, President of Sales Financial Concepts Mortgage Brad Sokolosky, President Operations Financial Concepts Mortgage General Partner Financial Concepts LLC	Oklahoma County, OK	Hispanic or Latino	331 False denial or representation of availability - sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale 450 Discriminatory acts under Section 818 (coercion, Etc.)		
060707208	04/26/2007	Maria Kehl, Agent Dillard Group Real Estate Scott Heiple, Broker Dillard Group Real Estate	Oklahoma County, OK	Hispanic or Latino	331 False denial or representation of availability - sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale 450 Discriminatory acts under Section 818 (coercion, Etc.)		

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
060707438	05/04/2007	Regina Hahn Washington Mutual Bank Medinah Steven Washington Mutual Bank Treana Higginbotham, Vice President Homeowner's Assistance	Burleson County, TX	Black or African American	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	08/10/2007	Conciliation/settlement successful
060708048	05/17/2007	Chris Rodden, Lender Mortgage Bankers	Dallas County, TX	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)		
060709138	06/13/2007	Frank Popp MTH Funding	Tarrant County, TX	Female, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans		
060709248	06/14/2007	Chad Englehart, Broker Gordon Lending	Sandoval County, NM	Black or African American and White, Female, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans		
060710418	07/17/2007	Jeanne Hodge, Housing Consultant American Homes Michael Moore, Jr. American Homes	Hunt County, TX	Black or African American	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale 450 Discriminatory acts under Section 818 (coercion, Etc.)		
060710938	07/27/2007	Lance Anderson, Corporate Chairman NovaStar Mortgage	Tarrant County, TX	White, Male, Color	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans		

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
060710948	07/26/2007	Stephan A. Echols, Sr. Vice President Benefit Bank	Sebastian County, AR		350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans		
060711538	08/10/2007	Linda Groth, Loan Officer Amegy Bank Amegy Bank	Harris County, TX	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions) 380 Discriminatory terms, conditions, privileges, or services and facilities		
060711588	08/13/2007	Anne Sutherland, General Legal Counsel NationStar Mortgage (Centex Home Equity Mortgage) Brian Woram, Chief Legal Officer Centex Corporation	Tarrant County, TX	Black or African American, Female	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale		
070500308	10/19/2004	c/o Registered Agent Fairbanks Capital/Select Portfolio Servicing Co.	Jackson County, MO	Female	353 Discrimination in the terms/conditions for making loans	01/25/2005	No cause determination
070501048	12/01/2004	Barbara Quick C/o American Mortgage Company American Mortgage Company	Lafayette County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	04/18/2005	No cause determination
070501068	12/01/2004	Mishel Le Phillips, Senior Mortgage Consultant MortgageTree Lending dba MortgageTree Lending dba	Jackson County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	03/02/2005	Complaint withdrawn by complainant without resolution

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070501128	12/03/2004	Citi-Financial Mortgage LeShea Evans-Smith Citi-Financial Mortgage	St. Louis County, MO	Black or African American	353 Discrimination in the terms/conditions for making loans	03/23/2005	Complaint withdrawn by complainant after resolution
070501968	01/31/2005	Lincoln Federal Savings Bank c/o Mike Isaacson Michael Issacson, Loan Officer Lincoln Federal Bank Greg Unger, Loan Officer Assistant Lincoln Federal Bank	Lancaster County, NE	Black or African American	350 Discriminatory financing (includes real estate transactions)	05/10/2005	No cause determination
070502418	02/24/2005	Paul Kramer Kramer Mortgage Company Joe Isenhart 1FIRST Realty Stephanie Toms, Loan Officer Kramer Mortgage Company 1FIRST Realty - GMAC Real Estate Colleen Reilly Senior Vice-President Aegis Wholesale Corporation	Polk County, IA	Female	350 Discriminatory financing (includes real estate transactions)	06/27/2005	Conciliation/settlement successful

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070502818	03/14/2005	Linda Pearl, Site Manager Noland Towers Harold Bradford Moore III Midwest Asset Management Group Noland Road Housing Company, Limited	Jackson County, MO	Physical Disability	350 Discriminatory financing (includes real estate transactions)	07/12/2005	No cause determination
070502848	03/16/2005	Bayview Loan Servicing, LLC. Vidal Gonzalez Bayview Loan Servicing, LLC.	St. Louis City, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	07/29/2005	No cause determination
070502868	03/16/2005	A.J. Adewunmi C/o Cots Realty Investment, Inc. Cots Realty Investments, Inc. Leonard Adewunmi Cots Realty Investments, Inc.	St. Louis County, MO	Female, Hispanic or Latino	353 Discrimination in the terms/conditions for making loans	02/21/2006	No cause determination
070502978	03/22/2005	William C. Nicols, Mortgage Broker The Mortgage Store The Mortgage Store Steve Scruggs The Mortgage Store	Laclede County, MO	Mental Disability, Physical Disability	351 Discrimination in the making of loans	07/11/2005	Complaint withdrawn by complainant after resolution

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070502988	03/22/2005	Randy Hall, Mortgage Broker First Metropolitan Mortgage First Metropolitan Mortgage	Laclede County, MO	Mental Disability, Physical Disability	351 Discrimination in the making of loans	06/29/2005	Complaint withdrawn by complainant after resolution
070503238	04/05/2005	George Fisher	Elk County, KS	Mental Disability	350 Discriminatory financing (includes real estate transactions)	06/27/2005	No cause determination
070503688	04/27/2005	Yvette Williams, Loss Mitigation Specialist Chase Manhattan Mortgage Chase Manhattan Mortgage	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	08/04/2005	No cause determination
070503758	05/02/2005	George Fisher	Elk County, KS	Mental Disability	350 Discriminatory financing (includes real estate transactions)	06/27/2005	No cause determination
070504838	06/21/2005	Tom Weiss First Financial Mortgage Raquel Martinez First Financial Mortgage	St. Charles County, MO	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	08/24/2005	Complainant failed to cooperate
070504938	06/24/2005	Youssef M. Semaan J.H. Real Property, LLC J.H. Real Property, LLC	Wyandotte County, KS	White, Female, Physical Disability	350 Discriminatory financing (includes real estate transactions)	09/09/2005	Complainant failed to cooperate

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070505228	07/01/2005	Doug Haldeman Infinity Mortgage Funding Bill Menees c/o Infinity Mortgage Funding Infinity Mortgage Funding Sarah Harrelson c/o Integrity Title Land Company Inc. Integrity Title Land Company Inc. Brook Shaffer c/o Lehman Brothers Bank, F.S.B.	St. Louis County, MO	Black or African American, Female	353 Discrimination in the terms/conditions for making loans	05/05/2006	No cause determination
070505368	07/11/2005	Karen Vehlewald Executive Realty Executive Realty	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	09/20/2005	Complaint withdrawn by complainant without resolution
070505408	07/13/2005	Ryan Swift, Broker Family Finance Mortgage Family Finance Mortgage	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	11/25/2005	No cause determination
070505438	07/13/2005	Brenda Huber BNC Mortgage BNC Mortgage, c/o Mary Santandrea, Attorney	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	02/13/2006	No cause determination

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070505488	07/18/2005	Alex Kasady, Loan Officer First Source Mortgage First Source Mortgage Corporation	Douglas County, NE	Physical Disability	350 Discriminatory financing (includes real estate transactions)	10/17/2005	Conciliation/settlement successful
070505668	07/22/2005	Leonard Adewunmi Remax Associates Julius Adewunmi Assfaw Alemayehu	St. Louis County, MO	National Origin (not Hispanic or Latino)	350 Discriminatory financing (includes real estate transactions)	12/19/2005	No cause determination
070505758	07/27/2005	Barbara Hyer	Douglas County, NE	Children under 18	301 Discriminatory refusal to negotiate for sale 350 Discriminatory financing (includes real estate transactions)	09/27/2005	Conciliation/settlement successful
070505768	07/27/2005	Clay Reese c/o Centex Home Equity Co. LLC. Centex Home Equity Co. LLC Centex Home Equity Co.	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	10/31/2005	Complaint withdrawn by complainant after resolution
070505778	07/27/2005	Clay Reese c/o Centex Home Equity Co. LLC. Centex Home Equity Co. LLC Centex Home Equity Co.	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	10/31/2005	Complaint withdrawn by complainant after resolution
070505958	08/05/2005	Jose Ponce Remax Gold Remax Gold	St. Louis County, MO	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	11/25/2005	No cause determination

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070506208	08/15/2005	Derrick Brown, Loan Officer Hometown Equity Mortgage Hometown Equity Mortgage	Jackson County, MO	Black or African American	320 Discriminatory advertising, statements and notices 350 Discriminatory financing (includes real estate transactions)	11/09/2005	Complaint withdrawn by complainant without resolution
070506318	08/17/2005	Marge Elder, Real Estate Agent Coldwell Banker Premier Terry Smith, Real Estate Agent Coldwell Banker Premier Coldwell Banker Premier	St. Louis City, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	11/15/2005	Complaint withdrawn by complainant after resolution
070506328	08/17/2005	Dixie D. Baus	St. Louis City, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	11/15/2005	Complaint withdrawn by complainant without resolution
070507028	09/15/2005	Bill Almeron Delmar Financial Marge Johnson, Collector Delmar Financial Delmar Financial	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	11/18/2005	Complainant failed to cooperate
070507068	09/16/2005	Nickie LNU, Claims Centex Home Equity Centex Home Equity	Jackson County, MO	Black or African American, Physical Disability	350 Discriminatory financing (includes real estate transactions)	10/27/2005	Complaint withdrawn by complainant after resolution
070507078	09/16/2005	Raquel Martinez C/o First Financial Tom Weiss C/o First Financial	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	01/18/2006	No cause determination

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070507168	09/26/2005	Commercial Federal Bank Jan Meister C/o Commercial Federal Bank	Sarpy County, NE	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/23/2005	Conciliation/settlement successful
070600348	10/11/2005	Brad Livers, Area Manager Century Mortgage Century Mortgage Ben Worsham, Agent Century Mortgage Todd McBride Century Mortgage	St. Louis County, MO	National Origin (not Hispanic or Latino)	353 Discrimination in the terms/conditions for making loans	01/13/2006	Conciliation/settlement successful
070600698	10/31/2005	Melissa Walker, Loan Officer Paramount Mortgage Paramount Mortgage Ruth Battle, Office Manager Paramount Mortgage	St. Louis County, MO	Black or African American, Female	353 Discrimination in the terms/conditions for making loans	12/23/2005	Complaint withdrawn by complainant after resolution
070601038	11/14/2005	Ethan Robinson Beneficial Financial, Senior Account Executive Beneficial Financial HSBC	Boone County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	03/27/2006	No cause determination
070601418	11/30/2005	CitiFinancial Mortgage	Clay County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	09/07/2006	No cause determination

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070601518	12/06/2005	Brad Jones, Branch Manager CitiFinancial Services, Inc. CitiFinancial Services	Jackson County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	03/13/2006	Conciliation/settlement successful
070601658	12/19/2005	Patrick Henry C/o Benchmark Mortgage Benchmark Mortgage Scott Wade Benchmark Mortgage	St. Charles County, MO	National Origin (not Hispanic or Latino)	351 Discrimination in the making of loans	01/30/2006	Complaint withdrawn by complainant after resolution
070601688	12/19/2005	Russ Miller C/o Infinity Mortgage Infinity Mortgage	St. Charles County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	03/23/2006	No cause determination
070602178	01/18/2006	Centex Home Equity Company, LLC	Jackson County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	03/29/2006	No cause determination
070602378	01/26/2006	Scott Munsen, Loan Officer C/o The Mortgage Company Suntrust Mortgage Sue Slayton Suntrust Mortgage	Riley County, KS	Black or African American, Physical Disability	350 Discriminatory financing (includes real estate transactions)	04/26/2006	Complaint withdrawn by complainant after resolution
070602398	01/26/2006	Anas Ames Home Loan Center, Inc. dba Lending Tree Loans Home Loan Center, Inc. dba Lending Tree Loans	Stone County, MO	Mental Disability	353 Discrimination in the terms/conditions for making loans	05/05/2006	Dismissed for lack of jurisdiction

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070602998	02/15/2006	Stewart Nelson, Loan Officer Residential Loan Centers of America Residential Loan Centers of America, Inc. c/o Matthew Rudnick, President Matt Rudnick Residential Loan Centers of America. Inc.	St. Louis County, MO	Female	353 Discrimination in the terms/conditions for making loans	04/20/2006	Complaint withdrawn by complainant after resolution
070603188	02/23/2006	Countrywide Home Loans	St. Louis County, MO	Black or African American	351 Discrimination in the making of loans	05/19/2006	Complaint withdrawn by complainant after resolution
070603578	03/08/2006	Jean McPherson, Loan Officer Aegis Lending Corporation Aegis Lending Corporation	Johnson County, KS	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	06/16/2006	No cause determination
070603758	03/14/2006	Donna Parker, Loan Officer U.S. Bank U.S. Bank	Johnson County, KS	Black or African American	353 Discrimination in the terms/conditions for making loans	06/06/2006	Complaint withdrawn by complainant without resolution
070603818	03/15/2006	Patrick Kerry, Senior Vice President American Services Company American Services Company	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	06/07/2006	Complaint withdrawn by complainant after resolution

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070604128	03/17/2006	Lance Weaver, Branch Manager American General Financial Services American General Financial Services David Ladwig American General Finance Services	St. Charles County, MO	Female, Physical Disability	353 Discrimination in the terms/conditions for making loans	06/21/2006	Complaint withdrawn by complainant after resolution
070605168	04/17/2006	Keith Templeton, Loan Agent c/o Sebring Capital Partners, LP Sebring Capital Partners, LP	St. Louis City, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	08/09/2006	No cause determination
070605238	04/24/2006	Coldwell Banker Ana Baldeone-Danishevsky	St. Louis County, MO	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	06/28/2006	Complaint withdrawn by complainant after resolution
070605438	05/01/2006	Derrick Brown, Loan Officer Hometown Equity Mortgage Hometown Equity Mortgage, et al. Donald Miller, Registered Agent	Jackson County, MO	Black or African American	320 Discriminatory advertising, statements and notices□ 350 Discriminatory financing (includes real estate transactions)	07/28/2006	No cause determination

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070605538	05/05/2006	Grant Weston, Loan Officer Select Portfolio Servicing, Inc. Cody Properties, LLC Gregory E. Harmner, Registered Agent Select Portfolio Servicing	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	07/24/2006	No cause determination
070605748	05/16/2006	Litton Loan Servicing, LP	Jackson County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	08/09/2006	Complaint withdrawn by complainant without resolution
070605758	05/16/2006	Dustin Roller, Loan Agent c/o Midwest Mortgage Midwest Mortgage	Jackson County, MO	Black or African American, Male	350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)	07/31/2006	No cause determination
070606028	05/31/2006	National City Corporation	Douglas County, NE	Children under 18, Familial Status Non-Specific	350 Discriminatory financing (includes real estate transactions)	08/17/2006	Dismissed for lack of jurisdiction
070606058	05/31/2006	Nova Star Mortgage Inc.	St. Louis County, MO	Black or African American, Physical Disability	350 Discriminatory financing (includes real estate transactions)	08/09/2006	Dismissed for lack of jurisdiction
070606138	05/31/2006	Ben Robinson, Owner Springport Mortgage Springport Mortgage	Jasper County, MO	Physical Disability	350 Discriminatory financing (includes real estate transactions)	09/01/2006	Complaint withdrawn by complainant without resolution
070606168	05/31/2006	Nicole McAllister, Underwriter Central National Bank Central National Bank	Rawlins County, KS	Black or African American, Physical Disability	350 Discriminatory financing (includes real estate transactions)	07/24/2006	Conciliation/settlement successful

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070607058	07/11/2006	Jennifer Henry, Closing Agent American Title Company American Title LLC Natalie Riley Holden Law Office, P.C.	Butler County, MO	Physical Disability	350 Discriminatory financing (includes real estate transactions)	10/11/2006	Complaint withdrawn by complainant after resolution
070607068	07/11/2006	Sheila Franks, Loan Officer Bank of America of Kennett Bank of America of Kennett Jackie Tobolski Bank Of America	Butler County, MO	Physical Disability	350 Discriminatory financing (includes real estate transactions)	10/11/2006	Complaint withdrawn by complainant after resolution
070607788	08/01/2006	Regency Savings Bank d/b/a Park National Bank Kathern Montgomery-Moran LORD BISSELL BROOK LLP	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	12/05/2006	Complaint withdrawn by complainant without resolution
070607908	08/08/2006	Clayton National Mortgage dba Morris - Griffin Corporation	St. Louis City, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	09/08/2006	Dismissed for lack of jurisdiction

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070608088	08/17/2006	Joe Molitor, Loan Officer Great Western Financial Group David Kohne Douglas M. Denton, Jr. Great Western Financial Group, St. Louis Jeff Hemm Great Western Financial Group, St. Louis Timothy J. Thomas Great Western Financial Group, St. Louis Amy Jaeger, Owner/Executive VP Imperial Lending, LLC Larry Jaeger, Co-Owner Imperial Lending, LLC Robin Taylor Imperial Lending LLC Imperial Lending, LLC Great Western Financial Group, Inc.	St. Louis County, MO	Black or African American	351 Discrimination in the making of loans	05/07/2007	Complaint withdrawn by complainant without resolution
070608108	08/17/2006	Bryant Storey, Contractor Bryant and Company	St. Louis County, MO	Black or African American	353 Discrimination in the terms/conditions for making loans	10/11/2006	Dismissed for lack of jurisdiction

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070608118	08/17/2006	Jeff Caudle, Vice President Bank of Atchison Kansas Bank of Atchison, Kansas	Atchison County, KS	Female	351 Discrimination in the making of loans	11/22/2006	Conciliation/settlement successful
070608178	08/18/2006	Michael Lauritsen, Loan Agent Wells Fargo Bank Wells Fargo & Company	Lancaster County, NE	Black or African American	350 Discriminatory financing (includes real estate transactions)	11/22/2006	No cause determination
070608188	08/18/2006	Michael Kistler, Real Estate Agent Woods Brothers Realty Inc. Woods Brothers Realty Inc.	Lancaster County, NE	Black or African American	350 Discriminatory financing (includes real estate transactions)	11/22/2006	No cause determination
070700148	10/06/2006	Dawn Coile, Customer Service Representative HSBC Mortgage Company HSBC Mortgage Company Laura Minich HSBC Mortgage Company	St. Louis County, MO	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	01/05/2007	Complaint withdrawn by complainant after resolution

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070700358	10/17/2006	Linda Smith, Real Estate Agent Winchester Realty and Investment Company Winchester Realty Company, Inc. Marcellis A. Williams, Branch Manager and Loan Cons. American Mortgage Corporation Maurice Mitchell, Loan Officer American Mortgage Corporation American Mortgage Corporation People's Choice Home Loan, Inc.	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	01/11/2007	Complaint withdrawn by complainant after resolution

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070700508	10/23/2006	Michael Stapleton, Real Estate Agent Sunset Mortgage Company, LP Ryan Bridges, Broker Sunset Mortgage Company, LP Georgette Kennell, Loan Processer Sunset Mortgage Company, LP Sunset Mortgage Company, L.P. William McKanry USA Title LLC USA Title, LLC Argent Mortgage Company AMC Mortgage Company	St. Louis County, MO	Female	350 Discriminatory financing (includes real estate transactions)	01/24/2007	Complaint withdrawn by complainant after resolution
070700568	10/26/2006	National City Mortgage	St. Louis County, MO	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)	01/31/2007	Conciliation/settlement successful
070701178	11/27/2006	Countrywide Home Loan Tiffany Harrison Countrywide Mortgage Home Loans	St. Louis County, MO	Mental Disability	350 Discriminatory financing (includes real estate transactions)	01/29/2007	Complaint withdrawn by complainant after resolution
070701198	11/28/2006	Wells Fargo Bank Wells Fargo Bank	Saline County, KS	American Indian or Alaska Native	350 Discriminatory financing (includes real estate transactions)	01/16/2007	Complainant failed to cooperate

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070701968	01/17/2007	Paul Sinnett, Owner Plaza Mortgage Group Kevin Meara, Loan Officer Plaza Mortgage Group Plaza Mortgage Group	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	04/26/2007	No cause determination
070702098	01/19/2007	Decision One Mortgage Company LLC Decision One MortgageCompany LLC	Douglas County, NE	Female	350 Discriminatory financing (includes real estate transactions)	03/27/2007	Conciliation/settlement successful
070702248	01/25/2007	Rozee Kloke, Senior Loan Recovery Specialist Tier One Bank Tier One Bank	Douglas County, NE	Physical Disability	353 Discrimination in the terms/conditions for making loans	03/12/2007	Complainant failed to cooperate
070702768	02/22/2007	Holly Hoetterling, Loan Processor/Closer Deborah Gorman and Associates Deborah M. Gorman & Associates Homes Loans, LLC	St. Louis City, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	06/04/2007	No cause determination
070703408	03/08/2007	Chase Home Finance C/O Laureen Harris, Secretary Chase Home Finance, LLC C/O Laureen Harris, Secretary JP Morgan Chase Bank	Jackson County, MO	Black or African American	353 Discrimination in the terms/conditions for making loans	06/08/2007	No cause determination

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070703478	03/09/2007	Rick Brown, Director of Rebirth Mortgage Midwest Mortgage Capital Midwest Mortgage Capital, LLC	St. Louis County, MO	Black or African American	420 Redlining	06/08/2007	No cause determination
070703968	03/21/2007	Jeannie Andrews, Loan Officer Sunset Mortgage Company, L.P. Sunset Mortgage Company, L. P.	Clay County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	06/05/2007	Complaint withdrawn by complainant without resolution
070704188	03/29/2007	Elmer Austermann, Jr., Chairman and CEO Sun Security Bank	St. Louis City, MO	Female	350 Discriminatory financing (includes real estate transactions)		
070704468	04/09/2007	Edie Rebhuhn, Manager of Mortgage Loans Metro Federal Credit Union Mike c/o McDermott, President Metro Federal Credit Union	Douglas County, NE	Black or African American	351 Discrimination in the making of loans	07/16/2007	No cause determination
070704828	04/30/2007	Gracie Hunter, Workout Counselor Countrywide Home Mortgage Countrywide Mortgage Ventures, LLC-CSC Lawyers, Inc.	Jackson County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)	07/03/2007	Complaint withdrawn by complainant without resolution
070706248	06/28/2007	David Corner, Vice President Sun Security Bank	St. Louis County, MO	Female	351 Discrimination in the making of loans		
070706268	06/28/2007	David Corner, Vice President Sun Security Bank	St. Louis County, MO	Female	351 Discrimination in the making of loans		

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
070706318	06/29/2007	Donnetta Wells Sunset Mortgage Corporation Intervaele Mortgage Corporation Decision One Mortgage Company LLC	St. Louis County, MO	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)		
070706358	07/05/2007	EMC Mortgage Inc.	St. Louis County, MO	White	350 Discriminatory financing (includes real estate transactions)		
070706438	07/10/2007	Home EQ Servicing	Jackson County, MO	Black or African American, Physical Disability	353 Discrimination in the terms/conditions for making loans		
070706788	07/19/2007	Wells Fargo Home Mortgage, Inc. Wells Fargo Home Mortgage, Inc.	St. Louis County, MO	Black or African American	353 Discrimination in the terms/conditions for making loans		
070707228	08/08/2007	Jeffrey Wolfson, Owner Home Fund Mortage	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)		
080601668	04/24/2006	Christian Family Loans Big Money Savings	Park County, MT	Religion	320 Discriminatory advertising, statements and notices 351 Discrimination in the making of loans	07/28/2006	Complainant failed to cooperate
080700188	10/26/2006	Wells Fargo Bank, N.A. Susan Clark Wells Fargo Home Mortgage	Silver Bow County, MT	Mental Disability, Physical Disability	353 Discrimination in the terms/conditions for making loans	01/31/2007	Complaint withdrawn by complainant without resolution

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090501428	10/23/2004	REMAX Realty Rigoberto Melchor Real Estate Agent, REMAX Realty Jose Orlando Reyes Real Estate Agent, REMAX Realty Alfredo Sanchez Real Estate Agent, REMAX Realty Daniel Melendez Real Estate Agent, REMAX Realty Miriam Inu Real Estate Agent, REMAX Realty Gloria Lamas Real Estate Agent, REMAX Realty Martin Delamora Real Estate Agent, REMAX Realty Joel Cruzado Real Estate Agent,	Los Angeles County, CA	Black or African American	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	02/25/2005	No cause determination

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090501458	11/17/2004	Caesar Ramirez Golden Feather Realty Karla Ryan Golden Feather Realty Sherry Chao Golden Feather Realty Services, Inc. Bruce A. Barenblat Golden Feather Realty Services, Inc. Jenny Walters former Golden Feather employee Karla Renya	Los Angeles County, CA	Black or African American	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	03/10/2005	Conciliation/settlement successful
090501568	11/19/2004	Miranda Shanklin Nations Choice Mortgage Nations Choice Mortgage Chad Fisher Nationschoice Mortgage Carol A. Dye, CPA Nationschoice Mortgage	Los Angeles County, CA	Black or African American	350 Discriminatory financing (includes real estate transactions) 422 Redlining - mortgage	03/18/2005	No cause determination

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090502118	12/07/2004	Richmond American Homes Jackie Brush Richmond American Homes Linda Smith Richmond American Homes	Clark County, NV	Black or African American	350 Discriminatory financing (includes real estate transactions)	02/25/2005	Conciliation/settlement successful
090502688	12/18/2004	Wells Fargo Financial, et al.	San Bernardino County, CA	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	08/24/2005	Complaint withdrawn by complainant without resolution
090502928	12/28/2004	GMAC Commercial Mortgage Robert Starr	Los Angeles County, CA	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	11/18/2005	No cause determination
090503688	01/13/2005	Wells Fargo & Co. Wells Fargo & Co.	Santa Clara County, CA	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	08/24/2005	Complaint withdrawn by complainant without resolution
090504258	02/01/2005	Sam Thomason (Sales Agent) American West Development, Inc. Michael J. Wagner (Sales Manager) American West Development, Inc. American West Development, Inc. American West Development, Inc.	Clark County, NV	Black or African American	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	05/11/2005	No cause determination
090504388	02/04/2005	Wells Fargo Financial California, Inc.	Los Angeles County, CA	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)	08/24/2005	Complaint withdrawn by complainant without resolution

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090507658	05/11/2005	J. F. Shea Co., Inc. J. F. Shea Co., Inc. Shea Mortgage Inc,	San Diego County, CA	Asian	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale 450 Discriminatory acts under Section 818 (coercion, Etc.)	07/03/2006	Conciliation/settlement successful
090510228	08/01/2005	Warner Center Condominiums, LLC Troxler & Associates, Inc. Greg Blake Phil Sidenberg Nancy (last name unknown)	Los Angeles County, CA	Black or African American	300 Discriminatory refusal to sell 331 False denial or representation of availability - sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	08/21/2006	Conciliation/settlement successful
090510418	07/11/2005	Touchstone Home Mortgage Holly Arnold R. David Whitaker Wells Fargo Home Mortgage	Kern County, CA	National Origin (not Hispanic or Latino)	353 Discrimination in the terms/conditions for making loans	04/27/2006	Complainant failed to cooperate

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090602038	11/15/2005	Veneto LLC, Seller MGF Trust, Owner James Snedaker First American Title Ccompany Winco Capital Teresa Monaghan First American Title Company Richard Shapiro Bridge Capital Finance (formerly Winco)	San Bernardino County, CA	Black or African American	300 Discriminatory refusal to sell 350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)	02/23/2007	No cause determination
090603468	12/23/2005	City of Alameda Warmington Homes California Catellus Development Corporation	Alameda County, CA	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	04/04/2006	No cause determination
090603478	12/23/2005	Financial Freedom	Clark County, NV	Black or African American and White, Female	350 Discriminatory financing (includes real estate transactions)	03/22/2006	Conciliation/settlement successful
090604658	01/19/2006	City of Fairfield	Solano County, CA	Black or African American, Physical Disability	350 Discriminatory financing (includes real estate transactions) 380 Discriminatory terms, conditions, privileges, or services and facilities 445 Refusing to provide municipal services or property 510 Failure to make reasonable accommodation	04/04/2006	No cause determination

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090605398	02/01/2006	RE/Max Realty Associates Donna Sugden Real Estate Agent, RE/Max Realty Associates Michelle Wagner Real Estate Agent, RE/Max Realty Associates	Washoe County, NV	Asian	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	03/01/2006	Conciliation/settlement successful
090606478	02/17/2006	Easy Living Homes, Inc. Radeane Blackwell (Manager) Easy Living Homes, Inc. Marty Tharp (Sales Agent) Easy Living Homes, Inc. James Blackwell (President) Easy Living Homes, Inc.	Clark County, NV	Black or African American	350 Discriminatory financing (includes real estate transactions)	06/06/2006	No cause determination
090606558	02/23/2006	Wells Fargo Home Mortgage Denise Aliberti As An Individual	Orange County, CA	Black or African American	351 Discrimination in the making of loans		

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090609798	05/02/2006	Kathy Brusseau, Broker Double Eagle Properties Paul Gaboriault (Seller) c/o Kathy Brusseau, Broker	Carson City, NV	Asian, Hispanic or Latino	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	08/15/2006	No cause determination
090610618	05/19/2006	Paul Gaboriault (Seller) c/o Kathy Brusseau, Broker Kathy Brusseau, Broker Double Eagle Properties	Carson City, NV	Asian, Hispanic or Latino	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	08/24/2006	No cause determination
090613048	07/12/2006	Allied Home Mortgage Capital Corporation	Los Angeles County, CA	Black or African American	350 Discriminatory financing (includes real estate transactions)		
090700078	10/03/2006	City of Alameda Alameda Development Corp. City of Alameda	Alameda County, CA	Black or African American	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale	03/14/2007	No cause determination

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090700868	10/12/2006	Hope Broadley (Sales Agent) D. R. Horton James Archibald D. R. Horton Michael Mason (Loan Officer) DHI Mortgage DHI Mortgage Troy Collins (Loan Officer) DHI Mortgage	Clark County, NV	Black or African American	350 Discriminatory financing (includes real estate transactions)	02/05/2007	Complaint withdrawn by complainant without resolution
090701968	11/03/2006	Hope Bradley (Sales Agent) D. R. Horton D. R. Horton James Archibald D. R. Horton Michael Mason (Loan Officer) DHI Mortgage DHI Mortgage Troy Collins (Loan Officer) DHI Mortgage	Clark County, NV	Black or African American	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions)	02/05/2007	Complaint withdrawn by complainant without resolution

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090702138	11/08/2006	Wells Fargo Home Mortgage Yesina Romero (Loan Agent) Wells Fargo Home Mortgage Wells Fargo Home Mortgage	Clark County, NV	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans	02/21/2007	No cause determination
090704868	01/19/2007	Loyal Fritsch	Washoe County, NV	Female, Harassment	350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)	05/16/2007	Complainant failed to cooperate
090705258	01/30/2007	Thomas Thorne, Loan Officer Greystone Financial Group Greystone Financial Group Tuscano Condominium Homes Ken Baxter Tuscano Condominium Homes	Clark County, NV	Black or African American	350 Discriminatory financing (includes real estate transactions)	05/03/2007	Conciliation/settlement successful

HUD-processed Lending Complaints Opened Since 10/1/2004

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090708198	04/04/2007	Lennar Centennial Park 1 and 2 Scott Diamond (New Home Consultant) Lennar Centennial Park 1 and 2 Universal American Mortgage Co. Greg Dion (Loan Processor) Universal American Mortgage Co.	Clark County, NV	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)		
090710148	05/22/2007	Arizona Department of Housing Sandra Weis, Senior Program Specialist Arizona Department of Housing	Pinal County, AZ	Black or African American	350 Discriminatory financing (includes real estate transactions)		
090712738	07/11/2007	Pacific Southwest Development (Developer/Mngmt.Company) Mike Goeth Sales Agent, Pacific Southwest Development	Clark County, NV	Black or African American	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale		

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
090714508	08/14/2007	Steven Sullivan (Owner) Roberta Sullivan (Owner) Joan Toovey ReMax Elite Nevada Land Investment, LLC Chris Borja (Manager) Nevada Land Investments, LLC	Clark County, NV	Black or African American	312 Discriminatory refusal to rent and negotiate for rental□ 350 Discriminatory financing (includes real estate transactions)□ 380 Discriminatory terms, conditions, privileges, or services and facilities□ 450 Discriminatory acts under Section 818 (coercion, Etc.)		
100403058	09/13/2004	Ed Corcoran Metropolitan Capital LLC Paul Dunn Metropolitan Capital	King County, WA	Female	350 Discriminatory financing (includes real estate transactions)	02/28/2006	Unable to locate respondent
100403108	09/14/2004	Metropolitan Capital LLC Edward Corcoran Metropolitan Capital, LLC	King County, WA	Female	353 Discrimination in the terms/conditions for making loans	02/28/2006	Unable to locate respondent
100500858	01/21/2005	US Bank Brenda Nelson U.S. Bank U.S Bank	Marion County, OR	Physical Disability	350 Discriminatory financing (includes real estate transactions)□ 353 Discrimination in the terms/conditions for making loans	04/11/2006	Complaint withdrawn by complainant without resolution
100500888	01/31/2005	GMAC Mortgage Corp. David Applegate GMAC Mortgage Corp.	Multnomah County, OR	Black or African American, National Origin (not Hispanic or Latino)	350 Discriminatory financing (includes real estate transactions)□ 353 Discrimination in the terms/conditions for making loans	05/11/2005	Complaint withdrawn by complainant after resolution

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)	Date Closed	Closure Type
100500898	02/02/2005	United Financial Mortgage Corp. Laura Lubeck United Financial Mortgage Corp. Christian "Doe" United Financial Mortgage Corp.	Multnomah County, OR	Black or African American and White	350 Discriminatory financing (includes real estate transactions) 360 Discriminatory brokerage service	04/04/2005	No cause determination
100502288	07/11/2005	M & T Mortgage Corporation M&T Mortgage Corporation	Multnomah County, OR	Black or African American	351 Discrimination in the making of loans		
100601898	03/07/2006	Debra Dorgan Pacific Rim Mortgage Company Victoria M. Bigham Pacific Rim Mortgage Company	Marion County, OR	Black or African American	352 Discrimination in the purchasing of loans	05/22/2006	No cause determination
100602478	04/24/2006	Phyllis Shafer Alaska Community Development Corporation Dan Fauske Anchorage Housing Finance Corporation Patrick Shiflea Alaska Community Development Corporation	Matanuska-Susitna Borough, AK	Physical Disability	350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)	08/01/2006	No cause determination

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100701658	01/23/2007	Randy Banks, Partner and Loan Officer Northwest Mortgage Marc Schaller Joann Schaller Chuck Anderson, Partner Northwest Mortgage Shawn Zener, Partner Northwest Mortgage	Benewah County, ID	Mental Disability	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans	06/27/2007	Conciliation/settlement successful
100701758	01/26/2007	Wachovia Mortgage Corporation Lori Routh Wachovia Mortgage Corporation	Ada County, ID	National Origin (not Hispanic or Latino), Physical Disability	351 Discrimination in the making of loans		
100702398	03/06/2007	Interfirst Wholesale Mortgage Lending	Multnomah County, OR	Mental Disability	351 Discrimination in the making of loans		

Total Cases: 365

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
000700028	12/29/2006	GuideOne Insurance	Polk County, IA	Religion	321 Discriminatory advertisement - sale 350 Discriminatory financing (includes real estate transactions) 430 Otherwise deny or make housing available
000700048	01/09/2007	American International Group, Inc. AIG Federal Savings Bank Wilmington Finance, Inc.	Anne Arundel County, MD	Black or African American, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)
000700098	05/03/2007	Platinum Capital Group, Inc. PCG Financial, Inc.	Anne Arundel County, MD	Black or African American, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)
000700108	06/06/2007	Franklin Bank Corp. Franklin Bank, SSB	Harris County, TX	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)
000700118	06/06/2007	ComUnity Lending	Santa Clara County, CA	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)
000700128	06/06/2007	Guaranteed Rate Guaranteed Rate	Cook County, IL	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
010704948	08/07/2007	Washington Mutual Bank, FA Long Beach Mortgage Julieth Gallego, Broker Re-Max Sonia Escalante, Agent Re-Max GMAC Mortgage First Patriot Mortgage	Barnstable County, MA	Hispanic or Latino	352 Discrimination in the purchasing of loans
010704958	08/07/2007	Accredited Home Lenders, Inc. Nancy C. Hughes, Agent Mortgage Electronic Registration Systems, Inc. (MERS) Mortgage Electronic Registration Systems, Inc. (MERS)	Berkshire County, MA	Hispanic or Latino	352 Discrimination in the purchasing of loans
020401638	12/22/2003	Charter One Bank	New York County, NY	Female, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)□ 353 Discrimination in the terms/conditions for making loans

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
020600548	10/25/2005	Angelo R. Mozilo, Chairman and CEO Countrywide Financial Corp. Dave Sambol, President Countrywide Financial Corp. Sandra Lopez, Executive Assistant Countrywide Financial Corporation Andrew Kohut, Esq. Dollinger & Ostrowski, LLC Aaron Gregg, Manager Full Spectrum Lending/Countrywide Financial Full Spectrum/Countrywide Financial Corp.	Middlesex County, NJ	Black or African American, Female, Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions) 360 Discriminatory brokerage service 450 Discriminatory acts under Section 818 (coercion, Etc.)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
020706888	08/02/2007	Departamento de Vivienda de Puerto Rico Rafael De Orbeta Departamento de Vivienda de Puerto Rico Magda Morales Departamento de Vivienda de Puerto Rico Dept. de Vivienda Puerto Rico - FEMA Nuevo Hogar Seguro Ing. Jorge Rivera Jimenez Dept. de Vivienda de P.R./Prog. FEMA Nuevo Hogar Seguro Sra. Lydia Barreto Dept. de Vivienda de P.R./Prog. FEMA Nuevo Hogar Seguro Daliz Nieves Martinez Dept. de Vivienda de P.R./Prog. FEMA Nuevo Hogar Seguro Reminio Gonzalez	Caguas Municipios, PR	White, Physical Disability	302 Discriminatory refusal to sell and negotiate for sale 350 Discriminatory financing (includes real estate transactions) 450 Discriminatory acts under Section 818 (coercion, Etc.)

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HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
030008548	09/06/2000	Matt Saros World Savings Bank/World Mortgage Matt Saros World Savings Bank Jeffrey Bochner District Loan Manager, World Mortgage Barbara McLean Appraiser, World Mortgage Robert Reale Supervisor, Appraisals	Fairfax City, VA	Mental Disability, Physical Disability	353 Discrimination in the terms/conditions for making loans
030008558	09/25/2000	World Mortgage Company John Gibson World Mortgage Company Yolanda LNU World Mortgage Company Raye LNU World Mortgage Company	Fairfax City, VA	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)□ 353 Discrimination in the terms/conditions for making loans
030603758	04/12/2006	Fieldstone Investment Corp. Fieldstone Mortgage Company	Baltimore City, MD	Black or African American, Hispanic or Latino	352 Discrimination in the purchasing of loans□ 353 Discrimination in the terms/conditions for making loans

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
040304698	03/20/2003	Registered Agent Washington Mutual Home Loan Registered Agent Washington Mutual Home Loan Matthew Borland, Compliance Officer Washington Mutual Home Loan	Jefferson County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)
040308388	06/26/2003	Michelle Lewis, Vice President Mercedes Home, Inc. (Builder) JoAnn Beal, Senior Loan Officer MHI Mortage Cathy Kane, President MHI Mortgage Mercedes Homes, Inc. (Builder) MHI Mortgage	St. Lucie County, FL	Black or African American	302 Discriminatory refusal to sell and negotiate for sale 353 Discrimination in the terms/conditions for making loans
040409398	06/02/2004	J. B. Evans, Mayor Town of Fair Bluff, North Carolina	Camden County, NC	Black or African American	350 Discriminatory financing (includes real estate transactions)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
040413058	08/05/2004	Tom Cooper (Broker Agent) Carteret Mortgage Carteret Mortgage Corportation Galen Guseman New Century Mortgage Corporation Galen Guseman New Century Mortgage Debbie Friley New Century Mortgage Corp Tom Cooper New Address:First Metropolitan Mortgage(AKA: Cooper Group) Eric Weinstein President of Carterett (Home Office Karen Garrett New Century Mortgage	Jefferson County, KY	Black or African American	350 Discriminatory financing (includes real estate transactions)□ 353 Discrimination in the terms/conditions for making loans
040508628	05/03/2005	Kristy Smith Regions Mortgage Martha Wade Regions Mortgage	Madison County, AL	Black or African American	351 Discrimination in the making of loans

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
040511198	06/24/2005	Matt Hollingsworth Select Portfolio Servicing Select Portfolio Servicing	Berkeley County, SC	Black or African American	350 Discriminatory financing (includes real estate transactions)
040512928	08/04/2005	Victor Miller, Broker The Condo Store - Coldwell Banker	Fulton County, GA	Black or African American	300 Discriminatory refusal to sell 331 False denial or representation of availability - sale 350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale 410 Steering
040514398	09/12/2005	Mike Daly GMAC Mortgage Corporation Ernie Davis, Associate Manager GMAC Mortgage Corporation	Jefferson County, AL	Black or African American	353 Discrimination in the terms/conditions for making loans 410 Steering
040604218	02/09/2006	Manuel Torres, Broker Action Financial Mortgage, Corp. Sandra Torres Juan Carlos Hernandez Action Financial Mortgage, Corp. Action Financial Mortgage, Corp. B & A Title Services Corporation	Dade County, FL	Black or African American, Mental Disability	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans 450 Discriminatory acts under Section 818 (coercion, Etc.)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
040604368	02/09/2006	Manuel Torres, Broker Action Financial Mortgage, Corp. Juan Carlos Action Financial Mortgage, Corp. Sandra V. Torres Action Financial Mortgage, Corp. B & A Title Services Corporation	Dade County, FL	Black or African American, Mental Disability	350 Discriminatory financing (includes real estate transactions) 353 Discrimination in the terms/conditions for making loans 450 Discriminatory acts under Section 818 (coercion, Etc.)
040605228	03/10/2006	Renee Powell, Branch Manager New South Federal Savings bank Will Radcliffe, President New South Federal Savings Bank Lizabeth Reynolds New South Federal Savings Bank	Mobile County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)
040607168	05/04/2006	Citi Financial Mortgage Company, Inc.	Montgomery County, AL	Black or African American	353 Discrimination in the terms/conditions for making loans
040612398	08/18/2006	Donald Gallardo Litton Loan Servicing, Inc. President/ CEO Litton Loan Servicing, Inc.	Madison County, AL	Black or African American, National Origin (not Hispanic or Latino)	350 Discriminatory financing (includes real estate transactions)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
040612958	08/30/2006	Sheryl Waldorp, Branch Manager Bancorp South Bank Bancorp South Bank	Jefferson County, AL	Black or African American	353 Discrimination in the terms/conditions for making loans
040700878	10/23/2006	Robert Guide, Director HSBC Mortgage Services, Inc. Eric Higdon, Branch Manager HSBC Mortgage Services, Inc. Angel Perez, Loan Officer HSBC Mortgage Services, Inc. Registered Agent CT Corporation System Laura Minich HSBC Mortgage Services-Compliance Officer Shun Rockway HSBC Mortgage Services	Dale County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions) 351 Discrimination in the making of loans
040701928	11/09/2006	Washington Mutual Bank Rochelle Herman Washington Mutual Bank Vice President	Broward County, FL	Black or African American	350 Discriminatory financing (includes real estate transactions)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
040702708	11/29/2006	Vanderbilt Mortgage & Finance, Inc. Kevin T. Clayton, Registered Agent Vanderbilt Mortgage & Finance, Inc. Lloyd Butler Vanderbilt Mortgage and Finance, Inc. Nakia Martin Vanderbilt Mortgage and Finance, Inc.	Walthall County, MS	Black or African American	350 Discriminatory financing (includes real estate transactions)
040703888	12/19/2006	David Dill (CEO) Saxon Mortgage Services First Franklin Financial Corporation	Jefferson County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)
040703968	12/20/2006	Mike Smith Smith & Patterson, Inc. Wayne Patterson Smith & Patterson, Inc.	Madison County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)
040704058	11/15/2006	Candy Gray, Vice President Amtrust Bank	Broward County, FL	Black or African American, Female	353 Discrimination in the terms/conditions for making loans
040704648	01/10/2007	A. Bender (Lending Agent) Regions Mortgage, Inc. Robert A. Goethe (President) Regions Mortgage, Inc.	DeKalb County, GA	Mental Disability, Physical Disability	351 Discrimination in the making of loans

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
040705818	01/05/2007	John Mabery, V. P. Mortgage Lending Queensboro National Bank Bill Easterlin, President Queensboro National Bank Sandra Glosser, Loan Officer Queensboro National Bank	Columbia County, GA	Black or African American	351 Discrimination in the making of loans
040705868	02/01/2007	Burt Jordan Broker-In-Charge	Darlington County, SC	Black or African American, Children under 18	350 Discriminatory financing (includes real estate transactions)
040706698	02/16/2007	Thomas Esposito, Realtor Coldwell Banker Deutsche Bank National Trust Company	Fulton County, GA	Black or African American, Female	331 False denial or representation of availability - sale□ 350 Discriminatory financing (includes real estate transactions)□ 354 Discrimination in the selling of residential real property
040706918	02/22/2007	Rhett Taylor, Mayor The City of Abbeville Ben Pritchett Euwing & Connors Associates David Euwing Euwing & Connors Associate	Henry County, AL	American Indian or Alaska Native and Black or African American, Female, Physical Disability	350 Discriminatory financing (includes real estate transactions)□ 380 Discriminatory terms, conditions, privileges, or services and facilities
040707618	03/08/2007	Mike Graham Merchants & Farmers Bank	Union County, MS	Black or African American, Female	353 Discrimination in the terms/conditions for making loans

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
040708458	03/27/2007	Joseph J. Levitt, Jr., Attorney Levitt Management, Inc.	Knox County, TN	Black or African American, Female, Religion	350 Discriminatory financing (includes real estate transactions) 381 Discrimination in terms/conditions/privileges relating to sale
040708538	03/28/2007	Mike Stanton Bank of New Albany J A Smallwood (Incorporator) Bank of New Albany J T Baker (Incorporator) Bank of New Albany Sam D Owen (Incorporator) Bank of New Albany	Union County, MS	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)
040709168	04/11/2007	Earle Moore, Sycamore Bank	Tallahatchie County, MS	Black or African American	353 Discrimination in the terms/conditions for making loans
040709708	04/23/2007	Dick Chittam, Owner Chittam & Collier Realty Phil Collier, Agent Chettam & Collier Realty	Limestone County, AL	Physical Disability	300 Discriminatory refusal to sell 331 False denial or representation of availability - sale 353 Discrimination in the terms/conditions for making loans 360 Discriminatory brokerage service 450 Discriminatory acts under Section 818 (coercion, Etc.)
040709718	04/23/2007	Clayton Homes, Inc. CMH Manufacturing, Inc. Vanderbilt Finance Pete Lamb, Manager Clayton Homes, Inc.	Limestone County, AL	Physical Disability	350 Discriminatory financing (includes real estate transactions)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
040711168	06/01/2007	Mark Amato H & R Block Laurie Gallo H & R Block	Madison County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)
040711928	06/20/2007	Shreen Kelsh Citifinancial Mortgage Robin Stewart Citifinancial Mortgage Ivy Magloom Citifinancial Mortgage Kim Blevins Citifinancial Mortgage	Jefferson County, AL	Black or African American	350 Discriminatory financing (includes real estate transactions)
050308898	07/22/2003	Leony Tavas-Scott, District Lending Manager Charter One Bank Phillip D. Snorden, Loan Officer Charter One Bank	Cook County, IL	Male	353 Discrimination in the terms/conditions for making loans□ 420 Redlining
050613208	06/13/2006	Shayna Friedman Countrywide Home Loans	Oakland County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)
050617338	08/04/2006	Terry Johnson, Consumer Credit Manager CitiBank CITIMORTGAGE Inc.	Cook County, IL	Black or African American	350 Discriminatory financing (includes real estate transactions)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
050701418	10/31/2006	Leslie O'Day Sydney TCF Bank Michigan Mike Mankwanian Sydney TCF Bank Michigan Melonie Lachance Sydney TCF Bank Michigan	Allegan County, MI	Black or African American	350 Discriminatory financing (includes real estate transactions)
050702988	12/12/2006	Roseanne Klingelhofer MidAmerica Bank, FSB	Cook County, IL	Black or African American	351 Discrimination in the making of loans
050703118	12/18/2006	Chris Hacker Source Lending Corp. Countrywide Home Loans	Hennepin County, MN	Female, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)
050705668	02/27/2007	Michael Winkleman American National Mortgage Kim Lewis, Closing Agent Midwest Guaranty Title Company	Dakota County, MN	Black or African American	350 Discriminatory financing (includes real estate transactions) 380 Discriminatory terms, conditions, privileges, or services and facilities
050706658	02/27/2007	Steven Snelling, President Midwest Guaranty Title Company Kim Lewis, Closing Agent Midwest Guaranty Title Company	Dakota County, MN	Black or African American	350 Discriminatory financing (includes real estate transactions) 380 Discriminatory terms, conditions, privileges, or services and facilities

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
050707528	04/13/2007	Wells Fargo Americas Servicing Co. Premier Asset Services	Wayne County, MI	Black or African American and White	350 Discriminatory financing (includes real estate transactions)□ 356 Discrimination in the appraising of residential real property
050708398	04/30/2007	Wells Fargo and Company Americas Servicing Company Premier Asset Services	Wayne County, MI	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)
050713028	07/25/2007	Paul Williams, President Homecoming Financial	Cleveland County, NC	Black or African American	350 Discriminatory financing (includes real estate transactions)
050713038	07/25/2007	Robert Simpson, CEO Aurora Loan Services, Inc. Jason Rupp Aurora Loan Services, Inc.	Craven County, NC	Black or African American	350 Discriminatory financing (includes real estate transactions)
050713168	07/27/2007	Cameron Williams, President/CEO Equity One, Inc	Dare County, NC	Black or African American	350 Discriminatory financing (includes real estate transactions)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
060605488	03/08/2006	John Micheal Davis, Loan Officer LMI Funding, Inc. William L. Holden, CEO, Director LMI Funding, Inc Joseph A Molkeen, Vice President, Director LMI Funding Inc Kelly D Parker, CFO, Director LMI Funding, Inc. Registered Agent Bridgespan Mortgage Corp Registered Agent LMI Funding, Inc. Ginger Davis	Denton County, TX	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)
060701828	11/14/2006	Antonio Cabballero American Finance Mortgage Services Mark Wolfe Remax DFW Associates II	Tarrant County, TX	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)□ 381 Discrimination in terms/conditions/privileges relating to sale

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
060707188	04/26/2007	Rico Rinco, Mortgage Professional Financial Concepts Mortgage Kurt Swink, President of Sales Financial Concepts Mortgage Brad Sokolosky, President Operations Financial Concepts Mortgage General Partner Financial Concepts LLC	Oklahoma County, OK	Hispanic or Latino	331 False denial or representation of availability - sale□ 350 Discriminatory financing (includes real estate transactions)□ 381 Discrimination in terms/conditions/privileges relating to sale□ 450 Discriminatory acts under Section 818 (coercion, Etc.)
060707208	04/26/2007	Maria Kehl, Agent Dillard Group Real Estate Scott Heiple, Broker Dillard Group Real Estate	Oklahoma County, OK	Hispanic or Latino	331 False denial or representation of availability - sale□ 350 Discriminatory financing (includes real estate transactions)□ 381 Discrimination in terms/conditions/privileges relating to sale□ 450 Discriminatory acts under Section 818 (coercion, Etc.)
060708048	05/17/2007	Chris Rodden, Lender Mortgage Bankers	Dallas County, TX	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)
060709138	06/13/2007	Frank Popp MTH Funding	Tarrant County, TX	Female, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)□ 353 Discrimination in the terms/conditions for making loans
060709248	06/14/2007	Chad Englehart, Broker Gordon Lending	Sandoval County, NM	Black or African American and White, Female, Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)□ 353 Discrimination in the terms/conditions for making loans

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
060710418	07/17/2007	Jeanne Hodge, Housing Consultant American Homes Michael Moore, Jr. American Homes	Hunt County, TX	Black or African American	350 Discriminatory financing (includes real estate transactions)□ 381 Discrimination in terms/conditions/privileges relating to sale□ 450 Discriminatory acts under Section 818 (coercion, Etc.)
060710938	07/27/2007	Lance Anderson, Corporate Chairman NovaStar Mortgage	Tarrant County, TX	White, Male, Color	350 Discriminatory financing (includes real estate transactions)□ 353 Discrimination in the terms/conditions for making loans
060710948	07/26/2007	Stephan A. Echols, Sr. Vice President Benefit Bank	Sebastian County, AR		350 Discriminatory financing (includes real estate transactions)□ 353 Discrimination in the terms/conditions for making loans
060711538	08/10/2007	Linda Groth, Loan Officer Amegy Bank Amegy Bank	Harris County, TX	Mental Disability, Physical Disability	350 Discriminatory financing (includes real estate transactions)□ 380 Discriminatory terms, conditions, privileges, or services and facilities
060711588	08/13/2007	Anne Sutherland, General Legal Counsel NationStar Mortgage (Centex Home Equity Mortgage) Brian Woram, Chief Legal Officer Centex Corporation	Tarrant County, TX	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)□ 381 Discrimination in terms/conditions/privileges relating to sale
070704188	03/29/2007	Elmer Austermann, Jr., Chairman and CEO Sun Security Bank	St. Louis City, MO	Female	350 Discriminatory financing (includes real estate transactions)
070706248	06/28/2007	David Corner, Vice President Sun Security Bank	St. Louis County, MO	Female	351 Discrimination in the making of loans
070706268	06/28/2007	David Corner, Vice President Sun Security Bank	St. Louis County, MO	Female	351 Discrimination in the making of loans

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
070706318	06/29/2007	Donnetta Wells Sunset Mortgage Corporation Intervaele Mortgage Corporation Decision One Mortgage Company LLC	St. Louis County, MO	Black or African American, Female	350 Discriminatory financing (includes real estate transactions)
070706358	07/05/2007	EMC Mortgage Inc.	St. Louis County, MO	White	350 Discriminatory financing (includes real estate transactions)
070706438	07/10/2007	Home EQ Servicing	Jackson County, MO	Black or African American, Physical Disability	353 Discrimination in the terms/conditions for making loans
070706788	07/19/2007	Wells Fargo Home Mortgage, Inc. Wells Fargo Home Mortgage, Inc.	St. Louis County, MO	Black or African American	353 Discrimination in the terms/conditions for making loans
070707228	08/08/2007	Jeffrey Wolfson, Owner Home Fund Mortage	St. Louis County, MO	Black or African American	350 Discriminatory financing (includes real estate transactions)
090606558	02/23/2006	Wells Fargo Home Mortgage Denise Aliberti As An Individual	Orange County, CA	Black or African American	351 Discrimination in the making of loans
090613048	07/12/2006	Allied Home Mortgage Capital Corporation	Los Angeles County, CA	Black or African American	350 Discriminatory financing (includes real estate transactions)

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
090708198	04/04/2007	Lennar Centennial Park 1 and 2 Scott Diamond (New Home Consultant) Lennar Centennial Park 1 and 2 Universal American Mortgage Co. Greg Dion (Loan Processor) Universal American Mortgage Co.	Clark County, NV	Hispanic or Latino	350 Discriminatory financing (includes real estate transactions)
090710148	05/22/2007	Arizona Department of Housing Sandra Weis, Senior Program Specialist Arizona Department of Housing	Pinal County, AZ	Black or African American	350 Discriminatory financing (includes real estate transactions)
090712738	07/11/2007	Pacific Southwest Development (Developer/Mngmt.Company) Mike Goeth Sales Agent, Pacific Southwest Development	Clark County, NV	Black or African American	350 Discriminatory financing (includes real estate transactions)□ 381 Discrimination in terms/conditions/privileges relating to sale

Open HUD-processed Lending Complaints

HUD File Number	HUD Date Filed	Respondents	County and State of Violation	Bases	Issues (Includes numerical issue code from HUD's Title VIII database)
090714508	08/14/2007	Steven Sullivan (Owner) Roberta Sullivan (Owner) Joan Toovey ReMax Elite Nevada Land Investment, LLC Chris Borja (Manager) Nevada Land Investments, LLC	Clark County, NV	Black or African American	312 Discriminatory refusal to rent and negotiate for rental□ 350 Discriminatory financing (includes real estate transactions)□ 380 Discriminatory terms, conditions, privileges, or services and facilities□ 450 Discriminatory acts under Section 818 (coercion, Etc.)
100502288	07/11/2005	M & T Mortgage Corporation M&T Mortgage Corporation	Multnomah County, OR	Black or African American	351 Discrimination in the making of loans
100701758	01/26/2007	Wachovia Mortgage Corporation Lori Routh Wachovia Mortgage Corporation	Ada County, ID	National Origin (not Hispanic or Latino), Physical Disability	351 Discrimination in the making of loans
100702398	03/06/2007	Interfirst Wholesale Mortgage Lending	Multnomah County, OR	Mental Disability	351 Discrimination in the making of loans

Total Cases: 89

HEARING ENTITLED: "Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement"

Tuesday, July 25, 2007

QUESTIONS FOR THE RECORD

1. Would the OCC support expanding the HMDA data fields to include:

    i. Pricing data on all loans, and not just higher-priced loans?
    ii. Information on the original channel of the loan, including whether the loan was originated by a mortgage broker?
    iii. Age of the borrower?

    Please explain the reasons for each response.

Response: While additional data might improve HMDA as a screening tool for identifying possible fair lending issues, high risk institutions, or loan files that warrant closer scrutiny, the proposed additional data should be evaluated in terms of their usefulness or predictive power as high risk indicators. The resulting value that additional data could provide should then be considered relative to the burden that would be imposed on institutions by requiring the additional data. We stress that even with additional data, the HMDA data will continue to serve as a *screening* tool and risk *indicator*. Making a determination that an institution has engaged in illegal discrimination will continue to require on-site examination work and file review to evaluate the many factors used in making underwriting and pricing decisions. All of these issues need to be carefully considered in deciding whether to require additional HMDA data.

2. In the last five years, has the U.S. Department of Justice accepted for referral from your agency cases that contained only allegations of disparate impact? Please provide the name of the case(s) accepted by DOJ. Were any such cases remanded to you for administrative handling?

Response: During the last five years, the OCC has not referred any cases to the U.S. Department of Justice (DOJ) containing only allegations of disparate impact. No such cases have been accepted by the DOJ from the OCC or remanded to the OCC for administrative handling.

3. As part of fair lending examinations, describe in detail the processes you have in place to detect disparate treatment of mortgage loan applicants (e.g. steering of minorities to higher-priced loans, discrepancies in time spent and information provided to protected classes)?

Response: The OCC detailed its fair lending supervisory process in a July 16, 2007 letter to Chairman Barney Frank and Chairman Melvin Watt and in its written testimony submitted to the Subcommittee on Oversight and Investigations, dated July 25, 2007. *See* Testimony of Calvin R. Hagins Before the Subcommittee on Oversight and Investigations at pp. 8-13 (July 25, 2007).

The OCC uses an annual screening process and fair lending risk assessments to identify institutions that exhibit heightened fair lending risk. Our screening process identifies institutions and lines of business evidencing factors that are indicative of higher risk for illegal disparate treatment of loan applicants. For example, one screen uses HMDA data to identify disparities in the incidence of higher-cost loans. Institutions that are flagged by our screening process are scheduled for in-depth fair lending examinations. These examinations involve reviews of practices, policies, and procedures, including an institution's risk for and response to potential steering.

The OCC uses interagency examination procedures developed by the FFIEC. The examination procedures, incorporated into the OCC's *Fair Lending Examination Procedures* dated April 2006, provide detailed guidance for assessing the risk of unlawful behavior involving overt discrimination, underwriting discrimination, pricing discrimination, discriminatory steering, discriminatory redlining, and discriminatory marketing.

With respect to a lender's assistance to applicants, the *Examination Procedures* direct examiners, as part of a file review in an underwriting examination, to compare the target and control groups for evidence that similarly situated applicants were treated differently in the quality of assistance provided. (*Examination Procedures* at pp. 39-40, 42.) During an exam, examiners are directed to request an explanation from bank management regarding all instances in which a denied applicant from a prohibited basis group was not afforded the same assistance as a similarly situated approved applicant from the control group. *Id.* at p. 66.

In the case of steering, the *Examination Procedures* provide guidance for examiners to assist in assessing the risk of discriminatory conduct, such as significant differences in the percentage of prohibited basis group borrowers receiving subprime loans, and steps for conducting a steering examination. *Id.* at pp. 25-26 and pp. 45-48.

As noted in Mr. Hagins' testimony, we recognize the new challenges regulators face with the increased complexity of the mortgage lending market, including the increased use of brokers. As a result, we are placing special emphasis in our examinations on the risk of lending discrimination through broker channels. Specifically, Comptroller Dugan has directed examiners at our banks with large mortgage operations, as part of their next fair lending exams, to review bank controls over brokers to address the risks of unlawful pricing disparities in this channel. Similarly, examiners at our banks with large mortgage operations have been directed, as part of their next fair lending examinations, to review controls and procedures to ensure that applicants are not unlawfully steered to high cost loan products.

4. How does the OCC ensure that individual victims are notified of and compensated for a financial institution's discriminatory practices in cases resolved through conciliation?

Response: When the OCC finds discriminatory practices in a national bank and such activities are not referred to or accepted by the DOJ, the OCC takes appropriate action against the financial institution, either formally or informally. If the institution's practices could have injured individual victims, the OCC requires the bank to search its records for potential victims and to provide written notification to these individuals. Depending on the type of practice engaged in by the bank, victims may be offered the opportunity to re-apply for credit [in a case involving the use of a scoring system that does not comply with the Equal Credit Opportunity Act (ECOA), for example] or compensated monetarily. The appropriate OCC supervisory office monitors the notification and compensation process. The bank may be required to provide the supervisory office with reports about the victims the bank has identified, the notification letters that were returned as undeliverable and the bank's activities in finding the "lost" victims, and the amount and timing of compensation to each victim. The OCC's supervisory office verifies that the notification and compensation that it requires of an institution are completed appropriately.

5. Should the OCC contract with private fair housing organizations to conduct comprehensive mortgage lending testing programs?

Response: The use of mortgage lending testers can present complicated policy issues concerning the methodologies used, the reliability of results, and a banking agency's reliance on testing conducted by a third party as a basis for concluding that an enforcement action is warranted. Different test structures, test companies, the testers themselves, and local conditions may influence and affect a tester's findings. To ensure that testing produces information that is sufficiently clear, reliable, and precise to determine whether violations have occurred and to support an enforcement proceeding, banking agencies would likely insist on data standards that are more rigorous and more standardized than would be adequate for a research or customer service project.

In addition, it would be important for the Department of Justice (DOJ) to articulate the criteria under which the use of testers would not violate federal statutes, such as those relating to making false statements, written or oral, for the purpose of influencing the action of a financial institution (18 U.S.C. § 1014). In this regard, we would note that DOJ has found some types of agency-sponsored pre-application testing programs to be permissible.[1] A more comprehensive articulation, not limited to the specific fact patterns in that case would be beneficial.

[1] *See* March 8, 1994 Department of Justice Office of Legal Counsel Opinion to Eugene Ludwig, Comptroller of the Currency, at: http://www.usdoj.gov/olc/occ.htm.

6. Would the OCC support an exemption to allow mortgage lending testers to provide false information on loan applications facilitating testers' involvement beyond the pre-application phase of the mortgage lending process?

Response: As noted above, what is needed first is clarification on this issue through a more comprehensive articulation by DOJ on what types of actions or programs are precluded under current law. With that clarification, one can then determine if and what laws need to be changed.

7. How do your staffing resources dedicated to fair lending compliance and enforcement compare to your staffing resources dedicated to protecting safety and soundness?

Response: The OCC's primary mission is to ensure the safety and soundness of the national banking system, including fair access to credit and fair treatment of bank customers. This includes fair lending compliance. Many of the same resources are used to enforce fair lending compliance and to ensure the safety and soundness of the national banking system. The OCC has approximately 2000 bank examiners who are responsible for conducting examinations of national banks. We believe that we devote sufficient resources to both fair lending and safety and soundness supervision.

8. What role do consumer complaints play in OCC's fair lending enforcement process?

Response: Fair lending, unfair or deceptive acts and practices, and predatory lending complaints received by OCC's Customer Assistance Group are forwarded to OCC's supervisory offices for review, as well as to the OCC's law department. Examiners also review any such complaints in the process of conducting a fair lending examination. We also review these complaints annually as part of our fair lending screening process. Examiners take this information into account as they set their examination scope and review the specific allegations made by the complainants.

9. Describe in detail the process and standards by which a referral is made to DOJ if the OCC has a reasonable belief that a pattern or practice of mortgage discrimination has occurred, including whether any discretion exists in making a "formal" referral, "informal referral" or no referral at all.

Response: If an examiner finds evidence of a potential fair lending violation, the bank is given an opportunity to provide relevant information to refute or explain the evidence. If after considering all relevant examination data and consulting with the supervisory office, the Compliance Policy Division (CPD), and appropriate legal staff, the examiner continues to believe a violation occurred, the bank's management is provided a letter explaining the preliminary findings. This letter explains the rationale for the findings and their preliminary nature, and gives the bank 30 days in which to provide a written response to the findings.

If, after reviewing the bank's response, the supervisory office determines there is a reason to believe that a fair lending violation has occurred, the violation recommendation is sent to our CPD. A memorandum is prepared for the Washington Supervision Review Committee (WSRC), a committee that reviews various types of potential enforcement actions. The memorandum contains analyses and recommendations concerning the potential violation(s), whether a referral or notification to another agency is required or is appropriate, and whether and what corrective action should be sought.

The WSRC then makes a recommendation to the Senior Deputy Comptroller for Large Banks or Senior Deputy Comptroller for Community and Midsize Banks, concerning: 1) whether a finding of unlawful discrimination is warranted; 2) whether a referral to the DOJ or a notification to HUD is required or appropriate; and 3) the required corrective action.

When the OCC determines that a referral to DOJ or a notification to the United States Department of Housing and Urban Development will be made, the bank is provided written notice and an opportunity to appeal the determination to the OCC's Ombudsman. If the bank chooses not to appeal, or if the appeal is denied, the matter is then referred and/or notification is made as appropriate.

ECOA requires the OCC to refer matters to DOJ "whenever the agency has reason to believe that 1 or more creditors has engaged in a pattern or practice of discouraging or denying applications for credit" in violation of ECOA's nondiscrimination provisions.[2] In cases not involving a pattern or practice of violations, the OCC has discretion to make a referral to DOJ when it has reason to believe that discrimination has occurred or when it is unable to obtain compliance with the ECOA's provisions.[3] Although there is some degree of judgment involved in determining whether the mandatory referral standard is met (e.g., whether there is a "pattern or practice"), if the OCC determines that the standard is met, a referral is required. In interpreting the phrases "reason to believe" and "pattern or practice," the OCC looks to the Interagency Policy Statement on Discrimination in Lending. 59 Fed.Reg. 18,266, 18271 (1994).

With respect to an "informal" versus a "formal" referral, in the 1990s the OCC and DOJ developed procedures for informally referring certain matters to DOJ when that agency is unlikely to initiate its own investigation concerning the matter. The reason this procedure was developed was to expedite the resolution of matters that are likely to be returned to the OCC for administrative handling.

In 1996, the DOJ provided guidance to the bank regulatory agencies on the type of matters that would be returned to the agencies for administrative handling. In its March

[2] 15 U.S.C. § 1691e(g).
[3] *Id.*

13, 2007, *Annual Report to Congress Pursuant to the Equal Credit Opportunity Act Amendments of 1976*, DOJ described this guidance as follows:

> [DOJ] described the distinction between referrals that [DOJ] would return to the agency for administrative resolution and those we would pursue upon referral. Referrals that would likely be returned generally have the following characteristics: (1) the practice has ceased and there is little chance that it will be repeated; and (2) the violation may have been accidental or arose from ignorance of the law's more technical requirements, such as spousal signature violations and minor price breaks for certain age groups not entitled to preferential treatment.

The OCC relies on this guidance in preliminarily assessing which cases may be returned to the OCC for administrative handling. In these cases, the OCC has generally contacted designated DOJ staff to discuss the matter. If DOJ staff confirm that DOJ is unlikely to pursue the matter, a letter to the Chief of the Housing and Civil Enforcement Section is prepared that memorializes this understanding, and DOJ's concurrence is obtained through a signature on the letter.

It is important to emphasize that the determination of whether to return a matter to the OCC for handling rests with DOJ. It is also important to emphasize that when a matter is returned to the OCC for handling, it is not treated any less seriously than other matters. These matters are all resolved through our supervisory or enforcement processes, as appropriate.

10. When was the OCC's last referral to DOJ for mortgage lending discrimination? Describe in detail the reasons you have not made any "referrals" for the last several years?

Response: The OCC's last referral to DOJ occurred in 2002. The reason the OCC has not made a referral to DOJ since that time is because the OCC has not determined in any matter that it has a reason to believe that a bank has engaged in a pattern or practice of discouraging or denying applications for credit in violation of the ECOA. Nor has it determined in any matter that a discretionary referral is appropriate.

11. You mention on page 22 of your written testimony that "the number of instances in which we have found illegal discrimination has declined in recent years." What, in your view, has caused this decline?

Response: We believe that several factors may be responsible for the decline in findings of discrimination. First, we believe that our rigorous supervisory program assists in addressing practices or weakness that could expose banks to unacceptable fair lending risk before such practices or weaknesses lead to potential violations. In this regard, we would stress that the primary method that we and the other federal banking agencies use to ensure compliance with fair lending and other consumer protection laws is direct supervision – not formal enforcement actions – of the banks we supervise. Our extensive and continual presence in national banks – from large teams of resident examiners at our largest banks to our frequent on-site examinations of our community banks – allows us to identify and fix potential weaknesses in controls that could lead to fair lending risks. As a result we obtain corrective action before practices or weaknesses lead to violations. When we need to take strong enforcement action, however, we do not hesitate to do so. Indeed, our record of aggressive enforcement of the fair lending laws in prior years sent a strong signal that unlawful discrimination will not be tolerated in the national banking system and is another factor that we believe has led to the decline in fair lending violations. Finally, we would note that many banks in recent years have adopted measures designed to strengthen fair lending compliance, such as second review programs, testing and self-evaluations, caps on broker compensation, and mechanisms to address the risk of potentially unlawful steering.

We do not mean to suggest that national banks are perfect, and we continually reexamine our supervisory processes to ensure that we are using the best means available to investigate whether disparities are the result of discrimination. Mr. Hagins' July 25, 2007 testimony outlines our joint purchase with the other FFIEC agencies of an external database of credit scores that we anticipate will assist us in our screening process. Additionally, as previously mentioned, our examiners of banks with large mortgage operations will be conducting targeted reviews of practices relating to controls on brokers and potentially unlawful steering.

12. The regulations implementing the Community Reinvestment Act (CRA) dictate that evidence of discriminatory or other illegal credit practices adversely affect a bank's CRA performance. As such, please describe how a bank's fair lending violations affect an institution's CRA rating. To your knowledge, have fair lending violations (including those resolved by settlement or consent decree) adversely affected the CRA ratings of institutions under your jurisdiction? If so, which institutions and what was the result?

Response: OCC's CRA regulation at section 25.28(c), *Effect of evidence of discriminatory or other illegal credit practices* states, "...evidence of discriminatory or other illegal credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;
(ii) Violations of the Home Ownership and Equity Protection Act;
(iii) Violations of section 5 of the Federal Trade Commission Act;
(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and
(v) Violations of the Truth in Lending Act provisions regarding a consumer's right to rescission."

In determining the impact of a substantive violation or abusive lending practice on the CRA rating, we consider a number of factors including: the nature of the violation, the extent of the problem, whether the bank self-identified the issue, whether the bank has initiated corrective action, and whether the bank has a compliance monitoring system. Decisions are made on a case-by-case basis and supported in the bank's report of examination and CRA public performance evaluation (PE).

The CRA PE language discusses substantive violations or findings resulting from illegal discrimination and other illegal credit practices inconsistent with helping to meet community credit needs that adversely affect the evaluation of an institution's CRA rating. A CRA PE would not include a detailed description of the fair lending supervisory activities when no substantive violations have been found.

The CRA ratings of the following banks were adversely affected by a finding of a violation of the fair lending laws:

1) First National Bank of Gordon, Gordon, NE – 9/21/1993 – rated Needs to Improve

2) First National Bank of Vicksburg, Vicksburg, MS – 11/3/1993 – rated Needs to Improve

3) Perryton National Bank (TX) – 8/30/1994 – rated Needs to Improve

4) Associates National Bank (DE) - 5/30/1997 – rated Needs to Improve

5) First Central Bank, NA (CA) – 6/18/1998 – rated Needs to Improve

6) Household Bank (SB), NA (NV) – 4/30/2001 – rated Satisfactory

7) Spirit of America National Bank (OH) – 10/15/2002 – rated Needs to Improve

13. Does the OCC have any legislative or regulatory recommendations to enhance fair lending enforcement? Do you need additional tools from Congress or your agency?

Response: No. The OCC has sufficient supervisory and enforcement powers to administer investigative and/or corrective actions necessary to address fair lending concerns. Additionally, the OCC has a wide range of enforcement powers to address unsafe or unsound practices or violations of law, rule or regulation.

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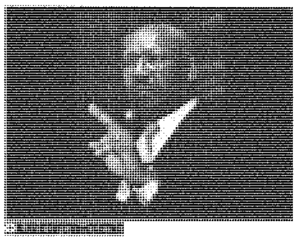
Regulators Quiet as Lenders `Targeted' Minorities (Update1)

By Craig Torres



June 13 (Bloomberg) -- The U.S. agencies that supervise more than 8,000 banks haven't censured any of them for violating fair-lending laws, three years after Federal Reserve researchers began assembling data showing blacks and Hispanics are more likely than whites to be saddled with high-priced home loans.

Minorities stand to be hardest hit by rising delinquencies and foreclosures in subprime loans. While Census Bureau data show that homeownership rates rose to records among blacks in 2004 and among Hispanics in 2005, they still trail whites by 25 percentage points, and the gap may widen in the current bust.

``Black people and Hispanics have been targeted,'' said Alphonso Jackson, secretary of Housing and Urban Development, whose department is hiring to expand its own probe of discriminatory lending.

``Low and moderate-income people get one shot at home ownership,'' Jackson said in an interview in Washington. ``And if they don't make it work, they don't get a second shot.''

Subprime loans -- those made at higher interest rates to people whom banks consider risky or who have sketchy credit histories -- accounted for more than half of the home foreclosures in the fourth quarter of last year. The Fed's review, conducted by economists from its research and statistics division, covered lending data from 2004 and 2005, the first two years of expanded disclosure requirements for banks and the final two years of Alan Greenspan's tenure as chairman.

Closer Scrutiny

Fed researchers singled out 470 lenders for closer scrutiny over two years, with some lenders showing up in both 2004 and 2005. The Fed has turned the names over to the relevant regulators and other authorities, including in some cases state officials.

The central bank says its research isn't conclusive on whether discrimination occurred. Details on how lenders price loans, such as borrowers' credit histories and the ratio of the loan amount to the value of the home, weren't provided by banks.

Even so, concentrations of high-cost mortgages ``shouldn't break down so blatantly and crudely to race,'' said Sarah Ludwig, co-director of the Neighborhood Economic Development Advocacy Project in New York and a member of the Fed's Consumer Advisory Council. ``Neighborhoods are getting mauled, and the regulators have been asleep at the wheel.''

Even industry executives are disturbed by the higher incidence rate of high-cost loans among minorities.

`Negotiate More'

``There's absolutely a good argument that those who can afford the least shouldn't be charged the most,'' Angelo Mozilo, chief executive officer of Countrywide Financial Corp., the largest U.S. home lender, said in an interview. ``When you compare whites to minorities, you'll find they usually don't get a better deal because they were offered a better deal, but because they negotiate'' more.

The supervision of America's 8,650 banks is split among five agencies: the Fed, the Office of Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corp. and the National Credit Union Administration. Each has the power to uphold fair-lending laws and to punish offenders.

None of the five national regulators has published an enforcement action based on the data, according to agency spokespeople. Some lenders have been referred to the Justice Department for possible action, and investigations are continuing.

Some Benefits

Interagency cooperation has benefited minorities in the past. A 2002 Fed referral to the Justice Department on lending practices by First American Bank of Carpentersville, Illinois, resulted in a $5.7 million consent order in 2004 for new branches, investment and education in black and Hispanic neighborhoods.

Consumer groups say minority neighborhoods may be intentionally marketed for high-cost loans by non-bank lenders, while poor financial literacy among low-income borrowers may lead to wrong choices. A legacy of discrimination that has kept minorities from owning assets, building wealth and improving credit history may also put them at a disadvantage when loans are priced.

``There are huge inequities in our society and it is incumbent upon bank regulators to battle them,'' said Alys Cohen, an attorney at the National Consumer Law Center in Washington who previously investigated lending discrimination at the Federal Trade Commission. ``I don't see any evidence that they are doing that.''

Bair Troubled

FDIC Chairman Sheila Bair said she is troubled by the data and may act on two cases. ``I don't believe, and I don't know that I have ever heard my colleagues say, that these disparities -- and they are significant -- can all be explained away through risk-based pricing,'' Bair said in an interview in Washington.

Consumer advocates using the Fed figures in their own research assert they do find evidence of discrimination. The Center for Responsible Lending in Durham, North Carolina, last year took the same mortgages analyzed by the Fed and matched them with its own proprietary information. The new data subset, of 177,487 subprime loans made in 2004, included credit scores, loan-to-value ratios and property locations.

The model concluded that African-American and Latino borrowers were more likely to receive higher-rate loans than white borrowers with similar risk.

`What is it?'

``What level of evidence is going to satisfy these guys?'' Kathleen Keest, a former assistant Iowa attorney general and now senior policy counsel at the center, said in reference to regulators. ``If you rule out risk, then what is it?''

The mortgage industry disputes the center's conclusions. ``We have some real questions about the accuracy of that study,'' said Douglas Duncan, chief economist at the Mortgage Bankers Association in Washington. He called the loan match-ups a ``crude approximation.''

Kevin Petrasic, a spokesman for the Office of Thrift Supervision, said no violations were found in the 20 lenders under his agency's jurisdiction that showed disparities along ethnic lines in 2004.

``When our folks went into the institutions, what the analysis showed was that the pricing aberration was linked to the FICO score, not disparate treatment of different classes of borrowers,'' Petrasic said, referring to an industry measure of creditworthiness. The 24 lenders that surfaced in the 2005 data remain under review.

The National Credit Union Administration fined some institutions for filing their loan reports late, according to spokesman Justin Grove.

Vigilance Pledged

``We will continue to be vigilant to ensure discriminatory practices don't enter the national banking system,'' said Kevin Mukri, a spokesman at the OCC in Washington, which had 80 of the institutions it regulates flagged over the two years. Mukri said he isn't aware of any enforcement actions linked to the 2004 and 2005 data.

The Fed itself conducted a fair-lending review of several of the 35 lenders it supervises that it had flagged for 2004, according to spokeswoman Susan Stawick. Of the 45 institutions that surfaced in 2005, examiners did ``a full risk assessment for pricing discrimination on each,'' she added. The central bank is now studying figures for 2006.

Red-Lining

The Justice Department's 2006 fair-lending report shows that one Fed referral on red-lining -- where a lender refuses to write mortgages in certain neighborhoods -- remained under investigation. Stawick said the central bank referred a discrimination case this year.

The FDIC has referred two cases to the Justice Department, officials said. ``We are waiting for the Department of Justice to determine whether or not it will take action as a courtesy, and then we will take our own enforcement action,'' said Robert Mooney, acting deputy director of supervision and consumer protection at the FDIC in Washington. ``It could require full reimbursement to borrowers for paying the higher costs of these loans.''

A referral by the Department of Housing and Urban Development to the Justice Department also remains under review.

The issue is gaining attention in Congress, where the Fed's overseers have grown impatient with its emphasis on guideline- based regulation that doesn't give consumers recourse to litigation. Senate Banking Committee Chairman Christopher Dodd, a Connecticut Democrat, said in an interview last week he will propose legislation if the Fed doesn't use its authority to strengthen consumer protection.

For now, Congress wants to see aggressive action from the regulators, said Representative Al Green, a Texas Democrat and member of the House Financial Services Committee.

``There is enough smoke here for us to either conclude that there is a fire, or for us to investigate to determine whether there is fire,'' he said in an interview. ``We absolutely must do something.''

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